



# COUNCIL MEETING AGENDA

## May 14, 2015

Members may attend in person or by telephone.

John W. Lewis, *Mayor*  
Jordan Ray, *Vice Mayor*

Eddie Cook  
Victor Petersen  
Jared Taylor

Jenn Daniels  
Brigette Peterson

**Municipal Center, Council Chambers**  
**50 East Civic Center Drive**  
**Gilbert, Arizona**

**Regular Meeting**  
**6:30 PM**

**AGENDA ITEMS MAY BE DISCUSSED IN A DIFFERENT SEQUENCE.**  
**ITEMS WILL NOT BE DISCUSSED PRIOR TO POSTED MEETING TIME.**

### **ADDENDUM**

#### **CONSENT CALENDAR**

9A. INTERGOVERNMENTAL AGREEMENT - consider approval of Intergovernmental Agreement No. 2015-7003-0722 with the Flood Control District of Maricopa County related to the Chandler Heights Basin.

10. DEVELOPMENT AGREEMENT – consider adoption of a Resolution approving the second amendment to the Development Agreement with NRI-Rivulon, LLC to extend the timeline for the completion of Pecos Road to June 30, 2016 and authorize the Mayor to execute the required documents.

The date was modified with the addendum.

11. DEVELOPMENT AGREEMENT – consider:

a) adoption of Resolution authorizing Gilbert to enter into a Development Reimbursement Agreement with East Valley Institute of Technology (EVIT) for partial reimbursement of a traffic signal at the intersection of Power Road and Verona Avenue; and

b) approval of an addendum to Intergovernmental Agreement No. 2014-4106-0223 (Mesa IGA No. 98-A017) with City of Mesa for the installation of traffic signals at the intersection of Power Road and Verona Avenue.

Item b was added with the Addendum.

20A. AGREEMENT – consider adoption of Resolution approving extension of Cable License Agreement No. 2001-1003-0331 with Cox Communications Arizona, LLC extending the cable license agreement through June 30, 2015.

The item was added by addendum and modified by addendum to eliminate dismissal of all claims with Cox Communication, LLC.

25. PARKWAY IMPROVEMENT DISTRICT - consider publicly declaring bids for Parkway Improvement Districts for FY2016; reject all bids but the bid of the lowest and best responsible bidder; waive clerical errors; and award contracts for the work and authorize the Mayor to execute the required documents as follows:

a) Contract No. 2015-8003-0673 with Somerset Contracting in the amount of \$202,127.82 for work in PK No. 07-03;

b) Contract No. 2015-8003-0674 with Somerset Contracting in the amount of \$42,023.80 for work in PK No. 07-04;

c) Contract No. 2015-8003-0675 with Somerset Contracting in the amount of \$31,281.32 for work in PK No. 07-09; and

d) Contract No. 2015-8003-0676 with Somerset Contracting in the amount of \$15,435.60 for work in PK No. 07-11.

Item a was changed with the addendum.

## **PUBLIC HEARING**

35A. CODE OF GILBERT - conduct hearing and consider adoption of an Ordinance amending the Code of Gilbert, Arizona, by amending the Code of Gilbert, Chapter 18 Cable Communications, Section 18-26 Payment of License Fees, Subsections (b) and (f) relating to payment of cable license fees and construction permit fees.

This item has been removed.

**NOTICE TO PARENTS:** Parents and legal guardians have the right to consent before the Town of Gilbert makes a video or voice recording of a minor child. A.R.S. 1-602.A.9. Gilbert Council Meetings are recorded and maybe viewed on Channel 11 and the Gilbert website. If you permit your child to participate in the Council Meeting, a recording will be made. If your child is seated in the audience your child may be recorded, but you may request that your child be seated in a designated area to avoid recording. Please submit your request to the Town Clerk.



## Council Communication

**TO:** Honorable Mayor and Councilmembers

**FROM:** Rod Buchanan, Parks and Recreation Director, 503-6280

**MEETING DATE:** May 14, 2015

**SUBJECT:** Chandler Heights Basin – Intergovernmental Agreement with the Flood Control District of Maricopa County

**STRATEGIC INITIATIVE:** Community Livability

Entering into this IGA for the Chandler Heights Basin property will provide further options for development of a District Park in the South area of Gilbert and is in alignment with the Parks, Recreation and Trails Master Plan.

### **RECOMMENDED MOTION**

A motion to approve the Intergovernmental Agreement with the Flood Control District of Maricopa County related to the Chandler Heights Basin.

### **BACKGROUND/DISCUSSION**

The Chandler Heights Basin (“Basin”) is located generally at the southwest corner of Queen Creek Road and Higley Road. Gilbert currently owns approximately 47 acres immediately adjacent to this intersection which is listed in the Parks and Recreation Master Plan as a potential new park site. In 2003 the Flood Control District of Maricopa County (“District”) adopted the East Maricopa Floodway Capacity Mitigation and Multi-Use Corridor Study, which recommends that the Basin be constructed for flood water detention enhanced with recreation facilities. The Gilbert Land Use Map and the Parks, Open Space, Trails and Recreation Plan Map identify the Basin as Parks/Retention and Public Open Space. The Chandler Heights Basin project (upper and lower sections) is included in the 2015-2019 Capital Improvement Program.

Upon completion of the entire project, the Basin will consist of an approximate 211 acre flood protection facility and a regional recreational facility at the Basin, in addition to the facilities on the approximate 47 acres immediately adjacent to this intersection owned by Gilbert.

Since July 2014 Gilbert and the District have been negotiating an intergovernmental agreement whereby Gilbert may acquire a perpetual easement for recreational purposes over the 211 acres constituting the Basin. An appraisal of the easement indicates the value is \$1,582,500. The major provisions of the agreement are:

- In return for the benefits to be received by the District, the District will convey to Gilbert at no cost a Non-Exclusive Recreational Use Easement over the Basin that will permit the construction, maintenance and operation of parks and related facilities. The easement will be conveyed upon Gilbert's request. The benefits to the District include Gilbert maintaining the recreational facilities to be constructed at the Basin, resulting in significant reduction of maintenance responsibilities at the Basin for District. In addition, residents in the unincorporated areas of Maricopa County will pay the same fees as Gilbert residents for programs and services delivered by Gilbert at the easement area.
- District approval is required for any recreational improvements constructed by Gilbert. Gilbert will own all the recreational improvements.
- Gilbert pays the cost for design and construction of the recreational improvements.
- All revenues derived from Gilbert programs and other activities at the Basin must be used by Gilbert exclusively to benefit programs and capital projects for the recreational uses.
- Flood control remains the primary purpose of the Basin and Gilbert's uses may not materially reduce, diminish or alter the flood control features of the Basin or the capturing, storing and conveying flood and storm water.
- Gilbert understands that water may inundate the Basin and recreational facilities; the District must use good faith efforts to provide notice. The District will not be responsible for damages to the recreational improvements. District maintenance activities may require closure of the recreational facilities during maintenance.
- The term of the agreement is for twenty-five years; however, the term of the easement is perpetual and will continue after the agreement expires. The District may cancel the easement only for cause (breach of the easement requirements by Gilbert), in which case Gilbert must remove the recreational improvements unless otherwise agreed by the District.

The intergovernmental agreement was reviewed for form by Susan Goodwin, Special Counsel.

### **FINANCIAL IMPACT**

The easement will be conveyed at no cost to Gilbert. The cost associated with the conceptual design is included in the proposed FY2016-2020 Capital Improvement Plan that is before Council this evening. This conceptual design will include preparation of estimated costs for construction and ongoing maintenance.

The financial impact was reviewed by Laura Lorenzen, Management and Budget Analyst.

**STAFF RECOMMENDATION**

Approve the Intergovernmental Agreement with the Flood Control District of Maricopa County.

Respectfully submitted,

Rod Buchanan  
Parks and Recreation Director

**Approved By**

Rod Buchanan  
Michael Hamblin  
Laura Lorenzen

**Approval Date**

5/4/2015 2:57 PM  
5/4/2015 3:21 PM  
5/4/2015 4:39 PM

When Recorded Return to:  
Flood Control District of Maricopa County  
2801 West Durango Street  
Phoenix, AZ 85009-6399

**INTERGOVERNMENTAL AGREEMENT**  
**FOR THE**  
**RECREATIONAL USE OF THE CHANDLER HEIGHTS BASIN**  
Between  
**THE TOWN OF GILBERT**  
and the  
**FLOOD CONTROL DISTRICT OF MARICOPA COUNTY**  
**IGA FCD 2015A005**

This Intergovernmental Agreement is entered into between the Flood Control District of Maricopa County, a municipal corporation and political subdivision of the State of Arizona, acting by and through the Board of Directors hereinafter called DISTRICT; and the Town of Gilbert, Arizona, a municipal corporation, acting by and through its Common Council hereinafter called GILBERT. This Agreement shall become effective as of the date it has been executed by all parties and is recorded by the Maricopa County Recorder.

**STATUTORY AUTHORIZATION**

1. The DISTRICT is empowered by Arizona Revised State Statute Sections 48-3603 and 11-952 to enter into this Agreement, and has authorized the undersigned to execute this Agreement on behalf of the DISTRICT.
2. GILBERT is empowered by A.R.S. Sections 9-494 and 11-952 to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of GILBERT.

**BACKGROUND**

3. The Board of Directors of the Flood Control District hereinafter called BOARD, adopted Resolution FCD 2001R006 on March 19, 2003, which adopted the East Maricopa Floodway Capacity Mitigation and Multi-Use Corridor Study dated August 2000 and September 2000 hereinafter called STUDY, as a basis to maintain the 100-year storm water conveyance of East Maricopa Floodway. The STUDY recommends that the Chandler Heights Basin be constructed for flood water detention, hereinafter called PROJECT, enhanced with a strong recreational theme as a multi-use facility with active recreational enhancements, including a Regional Park. The BOARD further resolved to authorize and direct the Chief Engineer and General Manager of the DISTRICT to negotiate and prepare intergovernmental agreements with other governmental agencies, including GILBERT, for implementation of the features of the STUDY in accordance with the guidelines established by Resolution FCD 93-03, which is the DISTRICT's Policy for the Aesthetic Treatment and Landscaping of Flood Control Projects hereinafter referred to as the POLICY. The POLICY encourages multi-purpose uses of flood control projects to the extent that such uses do not interfere with the function and operation of the flood control facility and do not

significantly increase DISTRICT maintenance requirements of the facility.

4. The DISTRICT has completed the design for the PROJECT, located between Higley Road and the East Maricopa Floodway and south of Queen Creek Road. The PROJECT captures flows from Queen Creek Wash and Sonoqui Wash thereby improving the level of flood protection provided by the East Maricopa Floodway to a 100-year level of protection based on the future land use of the watershed (projected to the year 2020).
5. GILBERT has adopted and published a Land Use Map and a Parks, Open Space, Trails and Recreation Plan Map, that identifies the PROJECT area as Parks/Retention and Public Open Space.
6. The size and design of the PROJECT, located within the geographical limits of GILBERT, lends itself to multi-use and recreational activities as previously determined and recommended by the STUDY. In accordance with the STUDY recommendation, GILBERT has requested to develop and to use the PROJECT for multi-use and recreational activities.
7. The DISTRICT has acquired the land rights for the PROJECT. Excavation and construction of the PROJECT has begun and is an on-going process. The portion of the PROJECT south of the Ocotillo Road alignment has been completed. There remains approximately 2,500,000 cubic yards of excavation to be done at and north of the Ocotillo Road alignment to complete the PROJECT construction, along with other ancillary construction activities. The DISTRICT has been using and anticipates continuing to use a public auction process to remove the remaining material needed to create the PROJECT. The time frame for the completion of PROJECT excavation is unknown, but could be as long as five years or more.

### **PURPOSE OF THE AGREEMENT**

The purpose of this Agreement is to identify and define the roles, responsibilities, liabilities and rights of the DISTRICT and GILBERT regarding the conveyance of an easement to GILBERT and for the implementation and maintenance of multi-use and recreational activities within the PROJECT.

### **TERMS OF AGREEMENT**

8. GILBERT's use shall not interfere with the DISTRICT's construction and operation of the flood control facilities. In case of conflict, the DISTRICT's need to complete the construction of the flood control features of the PROJECT shall take precedence over GILBERT's uses.
9. Upon request by GILBERT, the DISTRICT, in consideration of the benefits to be received from this Agreement, agrees to grant and convey unto GILBERT at no cost a Non-exclusive Recreational Use Easement ("Easement") over the PROJECT as shown in Exhibit "A" attached hereto ("Easement Area"), solely for the following uses: (i) construction, maintenance and operation of parks, landscaping, fencing, signage, lighting and other compatible recreational uses and related appurtenant facilities or improvements for the use and enjoyment of the general public ("Permitted Uses") and (ii) entry upon the Easement Area for the Permitted Uses. Construction of improvements for the Permitted Uses ("Recreational Amenities" or "Improvements") shall be at no cost to the DISTRICT and are subject to prior written approval from the DISTRICT, which approval shall be granted if the Recreational Amenities do not interfere with the flood control purposes of the PROJECT or with the construction of the flood control facility, which GILBERT acknowledges are primary purposes. The form of the Easement is attached as Exhibit "B". The



GILBERT Town Manager and DISTRICT Chief Engineer and General Manager may mutually agree to non-substantial modifications to the Easement to further the purposes of this Agreement.

10. No rights under the Easement may be assigned to any other entity unless expressly authorized in writing by the DISTRICT, which authorization shall not be unreasonably withheld. Subject to Arizona Revised State Statute Section 48-3603(I). GILBERT may enter into sub agreements with other agencies, organizations, and private enterprises for use of the Easement Area for Permitted Uses consistent with this paragraph. However, no sub agreement shall be effective unless it is made specifically subject to this Agreement and unless any and all parties bound by such sub agreement specifically acknowledge the rights of the DISTRICT as set forth in paragraphs 15 through 19 of this Agreement.
11. All revenues derived from any source at the Easement Area shall be used by GILBERT exclusively to benefit programs and capital projects for the Permitted Uses at the Easement Area.
  - 11.1 Residents of the unincorporated area of Maricopa County shall pay the same fees as GILBERT residents for any programs or services delivered by GILBERT at the Easement Area.
12. All designs and plans for Recreational Amenities to or within the Easement Area shall be submitted by GILBERT through the DISTRICT "Right of Way Use Permit" process and approved in writing by the DISTRICT before GILBERT or its contractor(s) may begin construction of said Recreational Amenities within the Easement Area. No Improvements shall adversely impact either the hydraulic function of the flood control features of the PROJECT or the ability of such features to be operated and/or maintained.

13. GILBERT Responsibilities. GILBERT shall:

- 13.1 Be responsible for design, acquisition of additional rights-of-way beyond the Easement Area, all permits and inspections, utility relocations, construction, construction management, operation and maintenance and all other costs associated with the Recreational Amenities within the Easement Area and with all other necessary maintenance within the easement area as further defined in Paragraphs 13.2 through 13.4 herein
- 13.2 Be responsible for design, all permits and inspections, utility relocations, construction, construction management, operation and maintenance and all costs associated with modifying the contouring and grading of the Easement Area for the Permitted Uses. The flood control function of the PROJECT will be maintained, and prior approval by the DISTRICT, through its Right of Way Use Permit process, of any modifications of the PROJECT shall be obtained by GILBERT in advance of any such modifications.
- 13.3 Be responsible for operating and maintaining the Easement Area in addition to the Permitted Uses including but not limited to the following: (i) removal of graffiti, trash, and debris from, and management of weed and dust control within the Easement Area, (ii) maintaining, repairing, correcting any damage to and replacing PROJECT flood control features within the Easement Area which may become damaged or otherwise adversely impacted by the Permitted Uses of the Easement Area, (iii) maintaining all aesthetic, landscaping and associated irrigation features of and within the limits of the PROJECT, (iv) trash rack maintenance, etc.

- 13.4 Provide an operation and maintenance (O&M) plan for all O&M activities for the review and approval of the DISTRICT.
- 13.5 Be responsible for all dust control issues (PM10, etc.), as well as adhere to all applicable local, county, state, and federal rules, laws, codes, and/or regulations, upon recording of the Easement.
- 13.6 Schedule a final inspection of the Recreational Amenities with the DISTRICT when construction is finished, and including if construction is phased, and address or correct any discrepancies per approved plans.
- 13.7 Be responsible for regulation of the public use and for law enforcement in the Easement Area. The DISTRICT hereby grants to GILBERT the authority to enforce GILBERT ordinances, rules, regulations and policies on the Easement Area as necessary to regulate public use.
- 13.8 Allow the DISTRICT unrestricted access to the Easement Area including for the purpose of sediment removal, structural repair and replacement of flood control features and periodic inspections, as the DISTRICT deems necessary.
- 13.9 Maintain, at its expense and in full force during the term of this Agreement, public liability and property damage insurance covering the Easement Area and GILBERT's occupancy and use thereof against claims for personal injury and death in the following amounts:
- No less than (1) \$2,000,000 Bodily Injury – Each Person
  - No less than (2) \$5,000,000 Bodily Injury – Each Occurrence
  - No less than (3) \$5,000,000 Property Damage
- 13.10 Obtain any additional insurance, adjusting for inflation, or other factors that may be required by the DISTRICT after its five-year review of the insurance requirements, and after each five-year review thereafter. The DISTRICT understands that GILBERT may be self-insured and will provide a Certificate of Self-Insurance to the DISTRICT. These insurance requirements in this Agreement are not a cap on GILBERT's liability under this Agreement. GILBERT shall furnish to the DISTRICT a certificate evidencing the fact that such insurance has been obtained and is in full force and effect during the entire term of this Agreement, and that the DISTRICT is an additional insured thereunder, and that such insurance cannot be cancelled without thirty (30) days prior written notice to the DISTRICT. It is agreed that any insurance maintained by the DISTRICT shall apply in excess of and not contribute with the insurance provided by said policy. Failure to maintain insurance as required by the DISTRICT will constitute default of this agreement.

14. DISTRICT Responsibilities. The DISTRICT shall:

- 14.1 Review, permit as necessary and approve or disapprove any Improvements plans for the Recreational Amenities within the Easement Area, submitted by GILBERT. The DISTRICT shall review and approve such plans in accordance with its regular Right of Way Use Permit processes, which approval shall not be unreasonably withheld.
- 14.2 Be responsible for sediment removal, structural repair and replacement of flood control features and for periodic inspections of such features, as the DISTRICT deems necessary. The DISTRICT shall not be liable for any damages done to the Recreational Amenities as a result of these activities, unless caused by negligence of the DISTRICT.

- 14.3 Reserve the right to inspect the Easement Area to ensure that the PROJECT's flood control function has not been reduced by GILBERT's facilities and activities.
- 14.4 Promptly undertake the removal of sediment that enters the basin of the Easement Area due to flooding if requested to do so by GILBERT and provided the DISTRICT finds a hydraulic need and deems it appropriate in order to maintain the flood control function of the basin of the Easement Area. The DISTRICT will not be responsible for damage caused by removal of the sediment, including damage to any turf areas, unless damaged by negligence on the DISTRICT's part. The total costs for the removal of sediment by the DISTRICT will be shared equally with GILBERT. GILBERT will reimburse the DISTRICT within thirty (30) calendar days of receipt of an invoice for such maintenance activities.
15. Preservation of Flood Control Functions. GILBERT agrees that the primary purpose of the Easement Area is to store and convey flood and storm water, and that GILBERT's use of the Easement Area may not materially reduce, diminish, or alter the flood control features of the PROJECT, or the hydraulic function of the PROJECT to capture, store and convey flood and storm water.
16. Notice of Adverse Impact; Cure. If the DISTRICT reasonably determines that the hydraulic function of the PROJECT to capture, store and convey flood and storm water within the Easement Area is being adversely impacted, either by use or modification of the Easement Area by GILBERT's facilities (an "Adverse Impact"), GILBERT shall have a period of ninety (90) days, after written notice is given by the DISTRICT to initiate correction of the Adverse Impact. If GILBERT does not correct the Adverse Impact within ninety (90) days after written notice is given, the DISTRICT reserves the right to correct such condition, and GILBERT shall reimburse the DISTRICT for its total costs associated with such correction within thirty (30) days of receipt of an invoice from the DISTRICT.
17. Inundation of Water. It is specifically understood and agreed that the DISTRICT shall have the sole, absolute, and unrestricted discretion and authority, without liability to GILBERT, or any third parties for damages of any kind, to allow water to inundate the Easement Area and any recreational facilities, which may occur with no advance warning; provided however, that DISTRICT shall use good faith efforts to provide as much notice as practicable. GILBERT agrees that the DISTRICT is not responsible for any damage to any Improvements in the Easement Area caused by the impoundment or movement of water and water-borne materials, including damage due to erosion and/or deposition of sediment and debris. The DISTRICT shall not be responsible for loss of access and use of the Easement Area during periods of time when the Easement Area may be functioning and holding and/or conveying water.
18. Maintenance of Flood Control Features. It is specifically understood and agreed that should temporary maintenance or operation of the DISTRICT's flood control features be necessary and require temporary closure of GILBERT's Recreational Amenities, as mutually determined by the DISTRICT and GILBERT, GILBERT shall, upon receiving such notice from the DISTRICT, cause the Recreational Facilities to be temporarily closed. The DISTRICT shall make good faith efforts to complete its maintenance activities, structural repair and replacement of flood control features promptly with minimal damage to and with as little interruption to GILBERT Recreational Amenities and uses as possible. GILBERT shall be responsible for restricting public access to the affected Easement Area during this time period. The DISTRICT shall give

GILBERT sixty (60) days written notice for non-emergency closures. However, the DISTRICT shall have unrestricted emergency operation and maintenance access, and if necessary, without prior advance notice to GILBERT for such access. The DISTRICT shall not be held responsible for any losses resulting from temporary closures.

19. GILBERT agrees that the DISTRICT may need to remove, or have GILBERT remove, specific Improvements in order for the DISTRICT to perform maintenance or to make structural repairs to flood control features of the PROJECT. The DISTRICT will not be responsible for damage caused by removal of or for replacing these Improvements to perform maintenance or make structural repairs to flood control facilities unless damaged by negligence on the DISTRICT's part.
20. Flood Response Plan. The DISTRICT will install, operate and maintain appropriate flood control gauges and equipment to monitor and measure floodwaters spilling over the side weir structure and entering the basin of the flood control project. The DISTRICT will work with GILBERT to establish an appropriate Flood Response Plan for the PROJECT, so that GILBERT can take appropriate action to warn the public and if necessary cause the evacuation the Easement Area.
21. Water Rights. Any water rights acquired by the DISTRICT for the Easement Area remain the sole property of the DISTRICT. However, the DISTRICT would not oppose efforts undertaken by GILBERT to obtain the required approvals from the Arizona Department of Water Resources (ADWR), and others as necessary, for the use of any grandfathered Type 1 irrigation water rights within the Easement Area. All metering, annual reporting and any and all other obligations associated with the use of such water rights would be the responsibility of GILBERT.
22. Title to Improvements; Abandonment. Title to any authorized Improvements constructed by GILBERT or its concessionaires, including buildings, shall vest and remain with GILBERT and GILBERT shall be responsible for continuous maintenance thereof. In the event the Easement is abandoned, or ceases to be used for the purposes intended for at least ninety (90) days after GILBERT completes Improvements to and commences use of the Easement, after thirty (30) days written notice to GILBERT, the DISTRICT may terminate this Agreement and the Easement and GILBERT shall remove all Improvements and return the property to its original condition, or a condition approved by the DISTRICT, at no cost to the DISTRICT.
23. Liens. If, in connection with any materials supplied to, or any work done or claimed to have been done by or on behalf of GILBERT or any contractor or subcontractor of GILBERT in connection with GILBERT's operation and maintenance obligation hereunder, any construction, mechanic's, laborer's, or material man's lien or any lien of any nature whatsoever, shall be filed against the Easement Area or any part thereof, GILBERT shall promptly (and in any event within thirty (30) days following notice from the DISTRICT demanding such discharge) cause the same to be discharged of record, by payment, deposit, bond, order of a court of competent jurisdiction or otherwise, or insured over to the satisfaction of the DISTRICT. If GILBERT shall fail to cause such lien to be discharged within such thirty (30) day notice period, then, in addition to any other right or remedy, the DISTRICT may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or bonding. Any amount so paid by the DISTRICT, with all costs and expenses (including but not limited to attorney's fees) incurred by the DISTRICT in connection therewith, together with interest thereon at a rate of ten percent (10 %) per annum (the "Default Rate") from the dates of the DISTRICT's making of the payment or incurring of such costs and expenses, shall be paid by GILBERT to the DISTRICT on demand. All possessory interest taxes and assessments which become due and payable upon the demised premises, or other personal property thereon, shall be

the full responsibility of GILBERT, and GILBERT shall cause said taxes and assessments to be paid promptly.

24. Hazardous or Regulated Substances. It is understood that no Hazardous or Regulated Substances (as those terms are hereinafter defined) are to be used, stored, generated, or disposed of on, in or about the Easement Area without first obtaining the DISTRICT's written consent thereto, which consent the DISTRICT may give or withhold in its sole reasonable discretion, and then only in compliance with all applicable state, federal, or local governmental statutes, laws, permits, ordinances, codes, and regulations. GILBERT may utilize weed control, pesticide and fertilizer products that are approved for use in or near "Waters of the United States".
- 24.1 In the event the presence of Hazardous Substances or Regulated Substances on, in or about the Easement Area results in contamination of the Easement Area, then GILBERT shall take any and all necessary actions to return the Easement Area to the condition existing prior to the presence of any such Hazardous Substance or Regulated Substance. The parties expressly acknowledge and agree that GILBERT's obligations hereunder shall not apply to any contamination caused by the presence of Hazardous Substances or Regulated Substances placed, used, stored, generated, or disposed of on, in or about the Easement Area by the DISTRICT.
- 24.2 As used herein, "Hazardous Substance" shall have the meaning set forth in the Federal Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., as amended 1986, or the Arizona Environmental Quality Act, Arizona Revised State Statute Section 49-101 et seq., (July 1, 1987) and "Regulated Substance" shall have the meaning set forth in Subtitle 1 of the federal Resource Conservation and Recovery Act (Underground Storage Tanks), 42 U.S.C. § 6991 et seq., as amended 1986, or the Arizona Underground Storage Tank Law, Arizona Revised State Statute Section 36-3301 et seq., (1986).
25. Default; Opportunity for Cure. Except in the case of interference of the flood control features of the PROJECT, in the event of a material default by GILBERT under this Agreement, the DISTRICT will notify GILBERT in writing of said default. The DISTRICT shall allow GILBERT sixty (60) days from receipt of the notice to correct any deficiencies. If, after sixty (60) days all of the noted deficiencies are not corrected, to the DISTRICT's reasonable satisfaction, the DISTRICT may, at its sole discretion, unilaterally terminate this Agreement upon written notice to GILBERT and Improvements shall be removed by GILBERT and the property returned to its original condition per the provisions of Paragraphs 13.11.2 through 13.11.4 herein. The recorded Easement will survive termination of this Agreement, but the Easement may be terminated according to the terms contained therein.
26. Fees. GILBERT will waive all fees for GILBERT permits and reviews required for construction of all PROJECT flood control features. The DISTRICT will waive fees for Right of Way Use Permits and reviews for GILBERT Recreational Amenities within the Easement Area.
27. Indemnification. Each party to this Agreement shall, as "Indemnitor," to the extent permissible by law, indemnify, defend and hold harmless the other party ("Indemnitee") including agents, officers, directors, governors and employees thereof, from and against any and all loss or expense incurred as a result of any claim or suit of any nature whatsoever, which arises out of any act or omission of Indemnitor pursuant to this Agreement, including but not limited to, reasonable attorneys' fees, court costs, and other expenses relating to the defense against claims or litigation,

incurred by the Indemnatee. Notwithstanding the above, Indemnatee shall be liable for its own negligence or wrongful acts as provided by law. In no event shall the Indemnitor owe or be obligated to pay any amounts which the Indemnatee has not actually paid or has no actual obligation to pay. In the event any agreement to pay to resolve issues of liability is not enforceable, or any agreement or settlement results in an actual obligation lower than the full amount of liability, the Indemnitor's obligation to pay shall be limited to the amount Indemnatee has paid or would be obligated to pay in the absence of any agreement to indemnify. GILBERT, by virtue of offering to allow uses of the Easement Area for other than flood control purposes, shall, to the extent permissible by law, indemnify, defend and save harmless the DISTRICT, including agents, officers, directors, governors and employees thereof, from any and all loss or expense incurred as a result of any claim or suit without limitation. Such indemnification obligation is intended to be a specific indemnity obligation rather than the general indemnity obligations set forth in this paragraph regarding all other types of claims or suits and shall include the obligation to provide reasonable attorneys' fees, court costs, and other expenses relating to the defense of such claims or litigation.

28. Notices. All notices, requests, demands or other communications ("Notices") required by this Agreement or otherwise given in respect of any transactions contemplated hereby, shall be in writing and served by personal delivery, or deposited with the United States Postal Service, registered or certified mail, return receipt requested, with proper postage affixed, addressed and directed to the party to receive the same as follows:

If to the DISTRICT:                      Flood Control District of Maricopa County  
2801 West Durango Street  
Phoenix, AZ 85009-6399  
Attn: Chief Engineer and General Manager

If to GILBERT:                              Town of Gilbert  
50 East Civic Center Drive  
Gilbert, Arizona 85296  
Attn: Town Manager; and,  
Attn: Parks & Recreation Director

28.1. Except as otherwise specifically stated in this Agreement, all Notices shall be effective upon delivery and shall be deemed delivered on the date and time of delivery if delivered in person, or if deposited with the U.S. Postal Service, on the third business day following the date of mailing. Any party may designate a different person or entity or change the place to which any Notice shall be given as herein provided, which Notice shall be effective after the same is actually received by the other party.

28.2. Each party shall send written notification to the other of any address changes over the life of the Agreement.

29. Remedies. In the case of any dispute over any items in this Agreement, the parties agree to use their best efforts to enter into good faith negotiations to resolve the disputed matters. However, this shall not limit the rights of the parties to seek any remedies provided by law.

30. Stormwater Management. Each party to this Agreement shall take reasonable and necessary actions within their authority to ensure that only storm water is discharged into the Easement Area, and that such discharges comply at the point of discharge with any applicable requirements of the

Clean Water Act, Arizona Pollutant Discharge Elimination System, or any other applicable discharge requirements, including any permit requirements.

31. GILBERT understands that use of the Easement Area for public recreational purposes is not an exclusive right. In the event that other entities express an interest to the DISTRICT in utilizing the same Easement Area for non-recreational but compatible uses, GILBERT agrees to accommodate these additional uses to the degree practical. The DISTRICT shall seek the consent of GILBERT prior to the allowance of the use of the Easement Area by other entities, which consent shall not be unreasonably withheld.
32. Approval of this Agreement shall not reduce, diminish, amend or otherwise impair any existing or future property rights owned by or granted to the DISTRICT by virtue of any land transfer document whether recorded or unrecorded.
  - 32.1 Prior rights and easements conveyed by the DISTRICT to other parties in previous Agreements shall supersede the terms of this Agreement, unless otherwise agreed in writing. A list of prior rights and easements granted or recorded against the Easement Area prior to the recordation of the Easement is set forth on the attached Exhibit "C". That list has been compiled on the basis of actual knowledge possessed by each party at the time of recordation of the Easement. Neither party is obligated to obtain a title report regarding the Easement Area in order to provide further confirmation that the text of Exhibit "C" is correct without such additional input, but either is free to do so at its own expense.
33. Term. This Agreement shall expire in twenty-five (25) years from the date of recording with the Maricopa County Recorder; however, the separately recorded perpetual Easement grant, and indemnification provisions of this Agreement shall survive expiration of the Agreement. By mutual written agreement of both parties, this Agreement may be amended or terminated. Notwithstanding any other terms of this Agreement, the DISTRICT may amend or cancel any Easement issued under this Agreement for cause. If an Easement termination is found to cause significant negative impact, the DISTRICT will notify GILBERT thirty (60) days in advance to allow GILBERT to reasonably mitigate those impacts. Any termination and associated costs are subject to the terms stipulated in paragraph 13 herein.
34. Cancellation. This Agreement is subject to cancellation by either party pursuant to ARIZ. REV. STAT. § 38-511.
35. Proper Form. Attached to this Agreement or contained herein, are the written determinations by the appropriate attorneys for the parties to this Agreement, that these agencies are authorized under the laws of the State of Arizona to enter into this Agreement and that it is in proper form.
36. Legislation. If legislation is enacted after the effective date of this Agreement, which changes the relationship, or structure of one or more parties to this Agreement, the parties agree that this Agreement shall be renegotiated at the written request of either party.

SIGNATURES ON FOLLOWING PAGES.

**FLOOD CONTROL DISTRICT OF MARICOPA COUNTY**  
**A Municipal Corporation**

Recommended by:

\_\_\_\_\_  
William D. Wiley, P.E.                      Date  
Chief Engineer and General Manager

Approved and Accepted:

By: \_\_\_\_\_  
Chairman, Board of Directors                      Date

Attest:

By: \_\_\_\_\_  
Clerk of the Board                      Date

The foregoing Intergovernmental Agreement FCD 2015A005 has been reviewed pursuant to Arizona Revised Statutes 11-952, as amended, by the undersigned General Counsel, who has determined that it is in proper form and within the powers and authority granted to the Flood Control District of Maricopa County under the laws of the State of Arizona.

\_\_\_\_\_  
Flood Control District Counsel                      Date



**Town of Gilbert**  
**A Municipal Corporation,**

By: \_\_\_\_\_  
Mayor Date

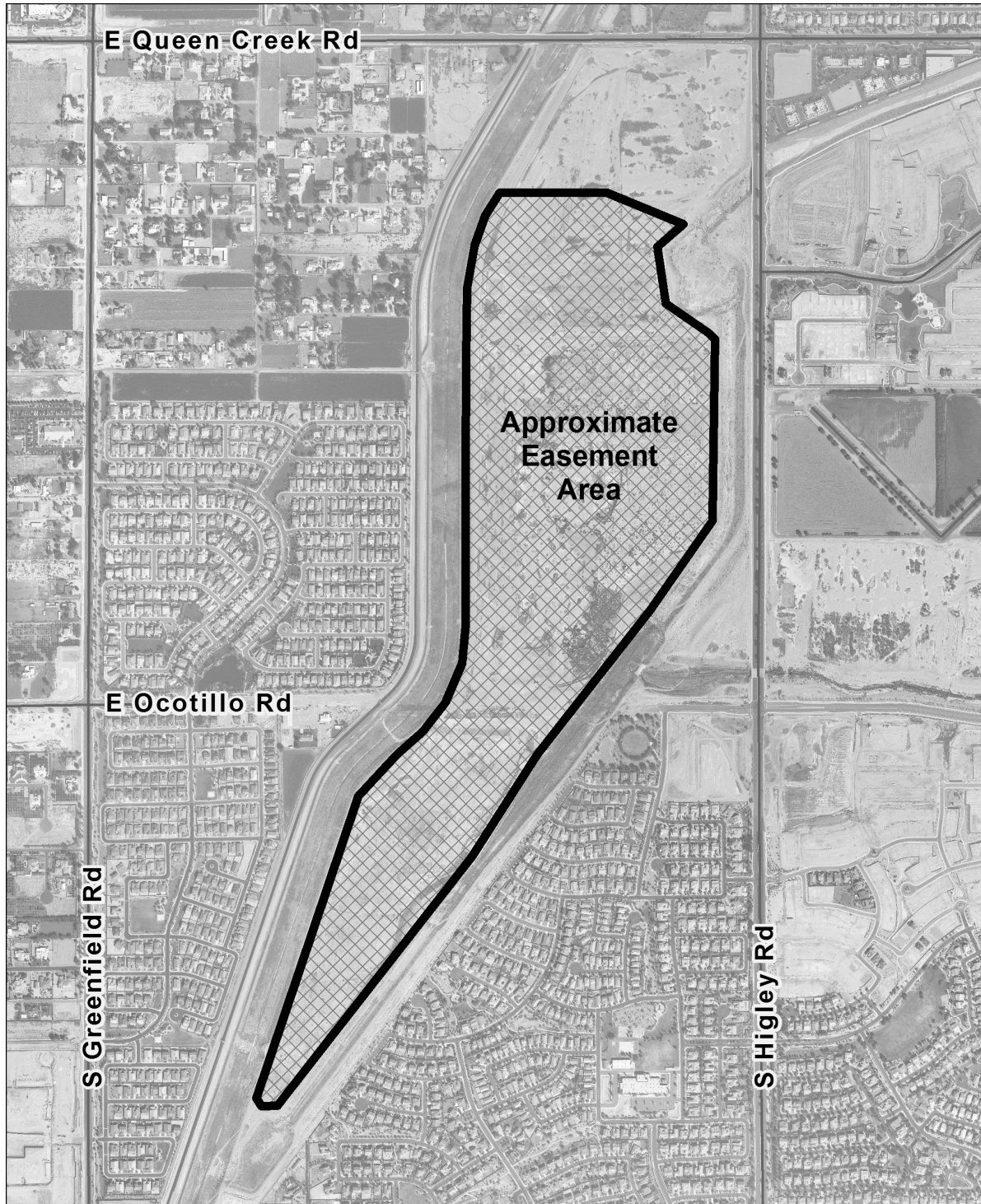
Attest:

By: \_\_\_\_\_  
Town Clerk Date

The foregoing Intergovernmental Agreement IGA FCD 2015A005 has been reviewed pursuant to Arizona Revised Statutes 11-952, as amended, by the undersigned attorney who has determined that it is in proper form and within the power and authority granted to the Town of Gilbert under the laws of the State of Arizona.

By: \_\_\_\_\_  
Town Attorney Date

**IGA FCD 2015A005**  
**EXHIBIT "A"**  
**Approximate Easement Area**



**IGA FCD2015A005**  
**EXHIBIT "B"**  
**Form of the Easement**

When recorded, return to:  
Flood Control District  
Of Maricopa County  
2801 West Durango Street  
Phoenix, Arizona 85009

EXEMPT A.R.S. § 11-1134, A3

**NON-EXCLUSIVE RECREATIONAL USE EASEMENT**

FCD Project:

FCD Parcels:

APN #s:

**THE FLOOD CONTROL DISTRICT OF MARICOPA COUNTY (DISTRICT)**, a municipal corporation and political subdivision of the State of Arizona, its successors and assigns, for and in consideration of the sum of **TEN DOLLARS** (\$10.00), and other valuable consideration, does hereby grant and convey unto the **TOWN OF GILBERT (GILBERT)** a municipal corporation of the State of Arizona, its successors and assigns, a non-exclusive recreational use easement (Easement) on, under and across the real property shown in **Exhibit "A"** (Easement Area), attached hereto and incorporated herein.

The **DISTRICT** does hereby grant and convey this Easement solely for the following uses: (i) construction, maintenance and operation of parks, landscaping, fencing, signage, lighting and other compatible recreational uses and related appurtenant facilities, utilities, or improvements and (ii) entry upon the Easement Area for recreation uses for the use and enjoyment of the general public. All other recreational uses, including but not limited to the erection of buildings in the Easement Area, are subject to prior approval from the **DISTRICT**, pursuant to the standard permitting process used by the **DISTRICT**. All designs and plans for recreational use improvements to the Easement Area must be submitted by **GILBERT** to the **DISTRICT** via its Right of Way Use Permit process and approved in advance prior to any said improvements being constructed or installed.

No rights and/or obligations under this Easement may be assigned to any other entity unless expressly authorized in writing by the **DISTRICT**, which authorization shall not be unreasonably withheld. **GILBERT** may enter into sub agreements with other agencies, organizations, and private enterprises for use of the Easement Area for Permitted Uses consistent with this Easement.

All construction, operations and maintenance and stewardship of the Easement Area, including but not limited to curing deficiencies, other uses, remuneration for **DISTRICT** costs and law enforcement, will conform and comply with the terms of Intergovernmental Agreement FCD 2015A005 (IGA) between the **DISTRICT** and **GILBERT**, recorded with the Maricopa County Recorder as identified via recordation

number 2015-xxxxxx, attached and incorporated herein as **Exhibit “B”**. **GILBERT** agrees at its expense and in full force, to maintain liability and property damage insurance coverage on the Easement Area at a minimum standard as required in the IGA, and further agrees to adhere to all other conditions and terms of the IGA.

This easement shall survive expiration of IGA, notwithstanding that easement may be terminated by the **DISTRICT** at its sole discretion under the following conditions: failure to cure deficiencies and/or adverse conditions in a timely manner; failure to reimburse the **DISTRICT** for costs associated with making modifications and/or correcting adverse impacts; failure to remove improvements not conforming to permit requirements; failure to maintain insurance as required; non-compliance with required permit process; failure to properly discharge a lien; or for any other default as described in the IGA.

**GILBERT** agrees that the primary purpose of the Easement Area is to store and convey flood and storm water, and that **GILBERT’s** use of the Easement Area may not reduce, diminish, or alter the flood control features of the Easement Area, or the hydraulic function of the Easement Area to capture, store and convey flood and storm water.

**GILBERT** agrees to indemnify he **DISTRICT** for any and all direct damages to the personal property or for physical injury to or death of persons on the Easement Area caused by or arising as the proximate result of the activities of **GILBERT**, its officers, employees, agents or contractors in the exercise of **GILBERT’s** rights pursuant to the terms of this Easement, except such injury or damages caused by or arising solely from the negligence or willfulness of **DISTRICT**, its officers, employees, agents or contractors.

**ACCEPTANCE:**

**TOWN OF GILBERT**

An Arizona Municipal Corporation

BY: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
City Clerk Date

**RECOMMENDED FOR APPROVAL:**

**ACCEPTED AND APPROVED:**

**FLOOD CONTROL DISTRICT  
OF MARICOPA COUNTY**

**BOARD OF DIRECTORS OF  
FLOOD CONTROL DISTRICT  
OF MARICOPA COUNTY**

\_\_\_\_\_  
William D. Wiley, P.E.      Date  
Chief Engineer and General Manager

\_\_\_\_\_  
Chairman of the Board

ATTEST:

\_\_\_\_\_  
Clerk of the Board

Date: \_\_\_\_\_

**EXHIBIT “A”**

(page 1)

(legal description here)

FORM OF THE EASEMENT

**EXHIBIT "A"**

(page 2)

(map exhibit to accompany legal description here)

FORM OF THE EASEMENT



**EXHIBIT “B”**

(final IGA FCD 2015A005 here)

FORM OF THE EASEMENT

**EXHIBIT “C”**

List of Prior Rights and Easements Granted or Recorded Prior to Recordation of Easement.

NONE



## Council Communication

**TO:** Honorable Mayor and Councilmembers

**FROM:** Kyle Mieras, AICP, Development Services Director, 503-6705

**MEETING DATE:** May 14, 2015

**SUBJECT:** Approve amendment to the Development Agreement between Gilbert and NRI-Rivulon, LLC.

**STRATEGIC INITIATIVE:** Economic Development

Agreement allows for on-going partnership between Gilbert and NRI-Rivulon, LLC. as construction continues on development.

### **RECOMMENDED MOTION**

Motion to approve the Second Amendment to the Development Agreement between Gilbert and NRI-Rivulon, LLC.

### **BACKGROUND/DISCUSSION**

The Town of Gilbert and NRI-Rivulon, LLC. (NRI) first entered into a development agreement in December 2012, and amended the agreement in June 2014. The first amendment largely dealt with right-of-way for Gilbert and Pecos Roads and the addition of a second building to the agreement.

In that amended agreement, the initial public improvements were to be completed by June 20, 2015. The initial public improvements include Gilbert Road and Pecos Road to S. Allen Avenue.

Construction is continuing on the full improvements to Gilbert Road. Pecos Road is being extended east toward S. Allen Avenue and will be tapered back to the existing condition prior to the S. Allen Avenue intersection. The next phase of construction will be the Pecos and S. Allen Avenue intersection and the extension of S. Allen Avenue to the south. As construction has continued and designs have been generated for the next phase, it became evident that with the amount of SRP irrigation ditch, SRP transmission line and SRP distribution line relocations and the design of S. Allen Avenue intersection, the June 20, 2015 date for extending Pecos to S.

Allen Avenue was unrealistic. In addition, NRI is proposing to relocate the utilities the entire length of Pecos Road, from Gilbert Road to Lindsay Road, at this time, instead of incremental construction as Pecos Road is constructed in the future to the east of S. Allen Avenue.

NRI has provided a project timeline outlining the phases for the construction. The plan identifies Pecos Road being completed from Gilbert Road to S. Allen Avenue in May 2016, including the S. Allen Avenue improvements to the south discussed in the First Amendment. Discussions with NRI's civil engineer have confirmed the timeline.

The intent of this amendment is to extend the timeline for the completion of Pecos Road to S. Allen Avenue to June 30, 2016 to coincide with the intersection construction and construction of S. Allen Avenue to the south into the site. This date also coincides with the dates in the First Amendment for the buildings. The timing of the construction of the buildings is not impacted. Reimbursements to NRI will not occur until the initial public improvements are completed.

The resolution was reviewed for form by Attorney Jack Vincent.

### **FINANCIAL IMPACT**

The financial impact was reviewed by Cris Parisot, Management and Budget Analyst.

### **STAFF RECOMMENDATION**

Staff recommends approval of the second amendment to the development agreement between Gilbert and NRI-Rivulon, LLC.

Respectfully submitted,

Kyle Mieras, AICP  
Development Services Director

**Approved By**

Kyle Mieras  
Jack Vincent  
Cris Parisot

**Approval Date**

5/4/2015 11:54 AM  
5/4/2015 1:04 PM  
5/4/2015 12:02 PM

WHEN RECORDED RETURN TO:

Corrected Agreement
------------------------

Town of Gilbert  
Attn: Town Clerk  
50 East Civic Center Drive  
Gilbert, Arizona 85296

SECOND AMENDMENT TO  
DEVELOPMENT AGREEMENT  
(RIVULON)

This Second Amendment to Development Agreement is made to that certain Development Agreement dated December 20, 2012, entered into between the Town of Gilbert, an Arizona municipal corporation, and NRI – Rivulon, LLC, an Ohio limited liability company, and recorded on January 24, 2013, as Document No. 20130073647, records of Maricopa County, Arizona (the “Original Agreement”), as previously amended by that certain First Amendment to Development Agreement recorded on July 8, 2014, as Document No. 20140444356, records of Maricopa County, Arizona (the “First Amendment”) The Original Agreement as amended by the First Amendment is referred to herein as the “Development Agreement”. Terms defined in the Development Agreement are intended to have the same meanings as set forth herein unless otherwise expressly provided.

The Development Agreement is hereby amended in the following respects:

1. Section 4.4 is amended and restated to read in its entirety as follows:

Following approval of the final plans and specifications for the Initial Public Improvements, Owner shall promptly commence and diligently pursue construction of the Initial Public Improvements and shall complete the Initial Public Improvements in accordance with the applicable plans and specifications, the Applicable Rules (including any applicable public bidding or procurement policies) and all other requirements of this Agreement on or before June 30, 2016, subject to delays caused by Force Majeure.

2. References in the Development Agreement to “completion” of Public Improvements, including the Initial Public Improvements in Sections 4.4, 4.5 and 4.7.1 and the Additional Public Improvements in Sections 7.2.1 and 7.2.2 of the First Amendment, shall mean that Owner’s civil engineer selected in compliance with Section 4.2, if applicable, has delivered to Gilbert a certificate of substantial completion certifying that such Public Improvements or applicable portion thereof have been substantially completed substantially in accordance with the applicable plans and specifications, subject to inspection of such Improvements by Gilbert confirming the engineer’s report. References in the First Amendment to “completion” of the Additional Building shall have the same meaning as is set forth in Section 3.3.1 of the Original Agreement with respect to the Initial Building, i.e., “upon the issuance of a certificate of occupancy” therefor.

3. Although completion of the Initial Public Improvements will be determined solely by Gilbert for purposes of the Development Agreement, nothing herein is intended to supersede the authority of the City of Chandler (“Chandler”) with respect to the portion of the Initial Public Improvements which (even though they are located within the boundaries of Gilbert) are subject to the jurisdiction of the Chandler pursuant to the Intergovernmental Agreement between Gilbert and Chandler.

Except as expressly provided in this Second Amendment, all provisions of the Development Agreement shall remain in full force and effect according to its terms.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement to be effective on the date and at the time an ordinance approving and adopting this Agreement is approved by the Gilbert Town Council.

**GILBERT:**

TOWN OF GILBERT, ARIZONA,  
an Arizona municipal corporation

By : \_\_\_\_\_  
Its: \_\_\_\_\_

**OWNER:**

NRI-RIVULON, LLC,  
an Ohio limited liability company

By Nationwide Realty Investors, Ltd.,  
an Ohio limited liability company,  
Its Sole Member and Manager

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2015,  
by \_\_\_\_\_, Town \_\_\_\_\_ of the Town of Gilbert, Arizona,  
an Arizona municipal corporation, who acknowledged that he/she signed the foregoing  
instrument on behalf of the Town.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

=====

STATE OF \_\_\_\_\_ )  
  ) ss.  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2015,  
by \_\_\_\_\_, the \_\_\_\_\_ of NRI  
– Rivulon, LLC, an Ohio limited liability company.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_



WHEN RECORDED RETURN TO:

Town of Gilbert  
Attn: Town Clerk  
50 East Civic Center Drive  
Gilbert, Arizona 85296

SECOND AMENDMENT TO  
DEVELOPMENT AGREEMENT  
(RIVULON)

This Second Amendment to Development Agreement is made to that certain Development Agreement dated December 20, 2012, entered into between the Town of Gilbert, an Arizona municipal corporation, and NRI – Rivulon, LLC, an Ohio limited liability company, which is recorded record on January 24, 2013, as Document No. 20130073647, records of Maricopa County, Arizona (the “Development Agreement”), and to that certain First Amended Development Agreement recorded on July 8, 2014, as Document No. 20140444356, records of Maricopa County, Arizona (the “First Amendment”). Terms defined in the Development Agreement are intended to have the same meanings herein unless otherwise expressly provided.

This Second Amendment to Development Agreement (“Second Amendment”) hereby amends the Development Agreement and the First Amendment in the following respects:

1. Section 4.4 is amended and restated to read in its entirety as follows:

Following approval of the final plans and specifications for the Initial Public Improvements, Owner shall promptly commence and diligently pursue construction of the Initial Public Improvements and shall complete the Initial Public Improvements in accordance with the applicable plans and specifications, the Applicable Rules (including any applicable public bidding or procurement policies) and all other requirements of this Agreement on or before June 18, 2016, subject to delays caused by Force Majeure.

Except as expressly provided in this Second Amendment, all other provisions of the Development Agreement and First Amendment shall remain in full force and effect according to its terms.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement to be effective on the date and at the time an ordinance approving and adopting this Agreement is approved by the Gilbert Town Council.

**GILBERT:**

TOWN OF GILBERT, ARIZONA,  
an Arizona municipal corporation

By : \_\_\_\_\_

Its: \_\_\_\_\_

**OWNER:**

NRI-RIVULON, LLC,  
an Ohio limited liability company

By Nationwide Realty Investors, Ltd.,  
an Ohio limited liability company,  
Its Sole Member and Manager

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014,  
by \_\_\_\_\_, Town \_\_\_\_\_ of the Town of Gilbert, Arizona,  
an Arizona municipal corporation, who acknowledged that he/she signed the foregoing  
instrument on behalf of the Town.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

=====

STATE OF \_\_\_\_\_ )  
  ) ss.  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014,  
by \_\_\_\_\_, the \_\_\_\_\_ of NRI  
– Rivulon, LLC, an Ohio limited liability company,.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, APPROVING THE SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT DATED DECEMBER 20, 2012, BETWEEN THE TOWN OF GILBERT, AN ARIZONA MUNICIPAL CORPORATION, and NRI 0 RIVULON, LLC, AN OHIO LIMITED LIABILITY COMPANY, RELATED TO THE DEVELOPMENT OF CERTAIN PROPERTY LOCATED IN THE TOWN; AND PROVIDING FOR REPEAL OF CONFLICTING RESOLUTIONS.

WHEREAS, A.R.S. § 9-500.05 authorizes the Town of Gilbert to enter into development agreements related to the development of property in the Town and to amend such development agreements; and

WHEREAS, the Town of Gilbert and NRI – Rivulon, LLC entered into a development agreement dated December 20, 2012, and recorded on January 24, 2013, as Instrument No. 20130073647, records of Maricopa County, Arizona (the “Development Agreement”); and

WHEREAS, the Town of Gilbert and NRI – Rivulon, LLC amended the Development Agreement via that certain First Amendment to Development Agreement (“First Amendment”) dated July 3, 2014, and recorded on July 8, 2014, as Instrument No. 20140444356, records of Maricopa County, Arizona (“First Amendment”), and desire to amend the Development Agreement once more, as set forth in the attached Second Amendment to Development Agreement (“Second Amendment”).

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, that the Second Amendment between the Town and NRI - Rivulon, attached hereto as Exhibit A, be and is hereby approved and the Mayor is authorized and directed to execute said Second Amendment; and

FURTHER RESOLVED, that the Town Clerk be and she is hereby authorized and directed to record a copy of the Second Amendment with the Maricopa County Recorder not later than ten days from the date of the Agreement.

FURTHER RESOLVED, that all resolutions and parts of resolutions in conflict with this Resolution are hereby repealed.

PASSED AND ADOPTED by the Common Council of the Town of Gilbert, Arizona this \_\_\_\_\_ day of \_\_\_\_\_ 2015.

\_\_\_\_\_  
John W. Lewis, Mayor

ATTEST:

\_\_\_\_\_  
Catherine A. Templeton, CMC, Town Clerk  
APPROVED AS TO FORM:

\_\_\_\_\_  
L. Michael Hamblin, Town Attorney

I hereby certify that the above foregoing Resolution No. \_\_\_\_ was duly passed by the  
Common Council of the Town of Gilbert, Arizona at a regular meeting held on  
\_\_\_\_\_, 2015, and that a quorum was present thereat and that the vote thereon was  
\_\_\_ayes and \_\_\_nayes and \_\_\_abstentions. \_\_\_\_Councilmembers were absent or excused.

\_\_\_\_\_  
Catherine A. Templeton, CMC, Town Clerk

WHEN RECORDED RETURN TO:

Town of Gilbert  
Attn: Town Clerk  
50 East Civic Center Drive  
Gilbert, Arizona 85296

SECOND AMENDMENT TO  
DEVELOPMENT AGREEMENT  
(RIVULON)

This Second Amendment to Development Agreement is made to that certain Development Agreement dated December 20, 2012, entered into between the Town of Gilbert, an Arizona municipal corporation, and NRI – Rivulon, LLC, an Ohio limited liability company, and recorded on January 24, 2013, as Document No. 20130073647, records of Maricopa County, Arizona (the “Original Agreement”), as previously amended by that certain First Amendment to Development Agreement recorded on July 8, 2014, as Document No. 20140444356, records of Maricopa County, Arizona (the “First Amendment”) The Original Agreement as amended by the First Amendment is referred to herein as the “Development Agreement”. Terms defined in the Development Agreement are intended to have the same meanings as set forth herein unless otherwise expressly provided.

The Development Agreement is hereby amended in the following respects:

1. Section 4.4 is amended and restated to read in its entirety as follows:

Following approval of the final plans and specifications for the Initial Public Improvements, Owner shall promptly commence and diligently pursue construction of the Initial Public Improvements and shall complete the Initial Public Improvements in accordance with the applicable plans and specifications, the Applicable Rules (including any applicable public bidding or procurement policies) and all other requirements of this Agreement on or before June 17, 2016, subject to delays caused by Force Majeure.

2. References in the Development Agreement to “completion” of Public Improvements, including the Initial Public Improvements in Sections 4.4, 4.5 and 4.7.1 and the Additional Public Improvements in Sections 4.7.2.1 and 4.7.2.2 of the First Amendment, shall mean that the Town of Gilbert has inspected the improvements and has determined that, in accordance with the Owner’s civil engineer selected in compliance with Section 4.2, if applicable, having delivered to Gilbert a certificate of substantial completion certifying that such Public Improvements or applicable portion thereof have been substantially completed substantially in accordance with the applicable plans and specifications. References in the First Amendment to “completion” of the Additional Building shall have the same meaning as is set forth in Section 3.3.1 of the Original

Agreement with respect to the Initial Building, i.e., “upon the issuance of a certificate of occupancy” therefor.

3. Any provision of the Development Agreement which refers to Gilbert in connection with submissions to, approval or acceptance by, satisfaction of, dedication to or responsibility for the Initial Public Improvements shall be deemed to mean and refer to the City of Chandler (“Chandler”) with respect to the portion of the Initial Public Improvements which (even though they are located within the boundaries of Gilbert) are subject to the jurisdiction of the Chandler pursuant to the Intergovernmental Agreement between Gilbert and Chandler.

Except as expressly provided in this Second Amendment, all provisions of the Development Agreement shall remain in full force and effect according to its terms.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement to be effective on the date and at the time an ordinance approving and adopting this Agreement is approved by the Gilbert Town Council.

**GILBERT:**

TOWN OF GILBERT, ARIZONA,  
an Arizona municipal corporation

By : \_\_\_\_\_  
Its: \_\_\_\_\_

**OWNER:**

NRI-RIVULON, LLC,  
an Ohio limited liability company

By Nationwide Realty Investors, Ltd.,  
an Ohio limited liability company,  
Its Sole Member and Manager

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2015,  
by \_\_\_\_\_, Town \_\_\_\_\_ of the Town of Gilbert, Arizona,  
an Arizona municipal corporation, who acknowledged that he/she signed the foregoing  
instrument on behalf of the Town.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

=====

STATE OF \_\_\_\_\_ )  
  ) ss.  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2015,  
by \_\_\_\_\_, the \_\_\_\_\_ of NRI  
– Rivulon, LLC, an Ohio limited liability company,.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_





## Council Communication

**TO:** Honorable Mayor and Councilmembers

**FROM:** L. Michael Hamblin, Town Attorney, 503-6027

**MEETING DATE:** May 14, 2015

**SUBJECT:** Development Reimbursement Agreement with EVIT and IGA No. No. 2014-4106-0223 with the City of Mesa for partial reimbursement of a Traffic Signal at the Intersection of Power Road and Verona Avenue

**STRATEGIC INITIATIVE:** Infrastructure

This project supports Gilbert's Infrastructure Strategic Initiative as it expands and improves the transportation system to meet the needs of Gilbert's citizen.

### **RECOMMENDED MOTION**

A) A motion to adopt a resolution authorizing Gilbert to enter into a Development Reimbursement Agreement with East Valley Institute of Technology (EVIT) for partial reimbursement of a traffic signal at the intersection of Power Road and Verona Avenue.

B) A motion to approve the addendum to Intergovernmental Agreement No. 2014-4106-0223 (Mesa IGA No. 98-A017) with City of Mesa for the installation of traffic signals at the intersection of Power Road and Verona Avenue.

### **BACKGROUND/DISCUSSION**

The East Valley Institute of Technology (EVIT) located at 6625 S. Power Road in Mesa has sought a traffic signal at Verona Avenue to facilitate traffic access to their campus. EVIT has agreed to participate financially in the construction of the traffic signal.

The Town of Gilbert will act as the lead and front the costs of design and construction of the traffic signal and will be reimbursed from EVIT in the amount of \$75,000. The current programming amount for a stand-alone traffic signal is approximately \$300,000. Pursuant to IGA No. 2014-4106-0223 dated March 3, 1998 (Mesa IGA No. 98-A017) and addendum to which is also proceeding for Council approval, the City of Mesa will reimburse the Town approximately \$100,000.00.

The Development Reimbursement Agreement and Addendum to IGA No. 2014-4106-0223 was reviewed by L. Michael Hamblin, Town Attorney.

### **FINANCIAL IMPACT**

The contingency budget request to cover the initial design and construction of the traffic signal at Power Road and Verona Avenue has been requested by Development Services as a separate item on this Council agenda. The Town of Gilbert is the lead on the construction project and will front the cost of design, purchase and installation. The Town of Gilbert will receive \$75,000 from EVIT as a result of this Development Reimbursement and approximately \$100,000 from the City of Mesa pursuant to IGA No. 2014-4106-0223 (Mesa IGA No. 98-A017).

Financial impact reviewed by Laura Lorenzen, Management and Budget Analyst.

### **STAFF RECOMMENDATION**

A) Staff recommends approval of a resolution authorizing Gilbert to enter into a Development Reimbursement Agreement with East Valley Institute of Technology (EVIT) for partial reimbursement of a traffic signal at the intersection of Power Road and Verona Avenue.

B) Staff recommends approval of a motion to the addendum to Intergovernmental Agreement No. 2014-4106-0223 (Mesa IGA No. 98-A017) with City of Mesa for the installation of traffic signals at the intersection of Power Road and Verona Avenue.

Respectfully submitted,

L. Michael Hamblin  
Town Attorney

Attachments and Enclosures:

Resolution and Development Reimbursement Agreement with East Valley Institute of Technology (EVIT)

Addendum to IGA No. 2014-4106-0223 (Mesa IGA No. 98-A017)

**LETTER ADDENDUM**  
**Between the**  
**Town of Gilbert and the City of Mesa**  
**For**  
**Traffic Signal Improvements at**  
**Power Road and Verona Avenue**

In accordance with paragraph seven (#7) of the Intergovernmental Agreement between the Town of Gilbert and the City of Mesa (IGA NO. 98-A017), for traffic signal improvements at various intersection along common boundaries; this letter addendum is to identify the cost participation for the construction and installation of a traffic signal at Power Road and Verona Avenue (the "Intersection").

Two of the three legs of the Intersection are located in Gilbert. Gilbert will be the Lead Agency as defined by IGA No. 98-A017. Mesa will reimburse Gilbert for thirty-three percent (33%) of the costs for the Intersection, as described in Paragraph 6 of IGA No. 98-A017.

**TOWN OF GILBERT**

**By:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**CITY OF MESA**

**By:** \_\_\_\_\_

**Date:** \_\_\_\_\_



## Council Communication

**TO:** Honorable Mayor and Councilmembers

**FROM:** L. Michael Hamblin, Town Attorney, 503-6027

**MEETING DATE:** May 14, 2015

**SUBJECT:** Development Reimbursement Agreement with EVIT for partial reimbursement of a Traffic Signal at the Intersection of Power Road and Verona Avenue

**STRATEGIC INITIATIVE:** Infrastructure

This project supports Gilbert's Infrastructure Strategic Initiative as it expands and improves the transportation system to meet the needs of Gilbert's citizen.

### **RECOMMENDED MOTION**

A motion to adopt a resolution authorizing Gilbert to enter into a Development Reimbursement Agreement with East Valley Institute of Technology (EVIT) for partial reimbursement of a traffic signal at the intersection of Power Road and Verona Avenue.

### **BACKGROUND/DISCUSSION**

The East Valley Institute of Technology (EVIT) located at 6625 S. Power Road in Mesa has sought a traffic signal at Verona Avenue to facilitate traffic access to their campus. EVIT has agreed to participate financially in the construction of the traffic signal.

The Town of Gilbert will act as the lead and front the costs of design and construction of the traffic signal and will be reimbursed from EVIT in the amount of \$75,000. The current programming amount for a stand-alone traffic signal is approximately \$300,000.

The Development Reimbursement Agreement was reviewed by L. Michael Hamblin, Town Attorney.

## **FINANCIAL IMPACT**

The contingency budget request to cover the initial design and construction of the traffic signal at Power Road and Verona Avenue has been requested by Development Services as a separate item on this Council agenda. The Town of Gilbert is the lead on the construction project and will front the cost of design, purchase and installation. The Town of Gilbert will receive \$75,000 from EVIT as a result of this Development Reimbursement.

Financial impact reviewed by Laura Lorenzen, Management and Budget Analyst.

## **STAFF RECOMMENDATION**

Staff recommends approval of a resolution authorizing Gilbert to enter into a Development Reimbursement Agreement with East Valley Institute of Technology (EVIT) for partial reimbursement of a traffic signal at the intersection of Power Road and Verona Avenue.

Respectfully submitted,

L. Michael Hamblin  
Town Attorney

Attachments and Enclosures:

Resolution and Development Reimbursement Agreement with East Valley Institute of Technology (EVIT)

**Approved By**

Michael Hamblin  
Michael Hamblin  
Laura Lorenzen

**Approval Date**

5/4/2015 3:20 PM  
5/4/2015 3:20 PM  
5/4/2015 4:31 PM

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, APPROVING A DEVELOPMENT REIMBURSEMENT AGREEMENT WITH EAST VALLEY INSTITUTE OF TECHNOLOGY (“EVIT”), A POLITICAL SUBDIVISION OF THE STATE, RELATED TO THE DEVELOPMENT OF CERTAIN PROPERTY LOCATED IN THE TOWN; AND PROVIDING FOR REPEAL OF CONFLICTING RESOLUTIONS.

WHEREAS, A.R.S. § 9-500.05 authorizes the Town of Gilbert to enter into development agreements related to the development of property in the Town; and

WHEREAS, all the property subject to the Development Reimbursement Agreement attached as part of Exhibit A is located within the Town of Gilbert or is immediately adjacent or is part of an Intergovernmental Agreement (“Property”); and

WHEREAS, the Town and EAST VALLEY INSTITUTE OF TECHNOLOGY (“EVIT”) desire to enter into a Development Reimbursement Agreement for the reimbursement by EVIT to the Town of the cost of construction of certain roadway signalization improvements otherwise requested to be constructed by EVIT; and

WHEREAS, the Town Council of the Town of Gilbert finds that entering into this Development Reimbursement Agreement is in the best interest of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, that the Development Reimbursement Agreement between the Town and EVIT, attached hereto as Exhibit A, be and is hereby approved and the Mayor is authorized and directed to execute said Development Reimbursement Agreement; and

FURTHER RESOLVED, that the Town Clerk be and she is hereby authorized and directed to record a copy of the Development Reimbursement Agreement with the Maricopa County Recorder within ten days after the date of its execution by the parties in accordance with the terms of the Agreement.

FURTHER RESOLVED, that all resolutions and parts of resolutions in conflict with this Resolution are hereby repealed.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF  
GILBERT, ARIZONA THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_

AYES: \_\_\_\_\_

NAYES: \_\_\_\_\_ ABSENT: \_\_\_\_\_

EXCUSED: \_\_\_\_\_ ABSTAINED: \_\_\_\_\_

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
John W. Lewis, Mayor

ATTEST:

\_\_\_\_\_  
Catherine A. Templeton, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
L. Michael Hamblin  
Town Attorney



When Recorded Return to:

Catherine A. Templeton, Town Clerk  
Town of Gilbert  
50 East Civic Center Drive  
Gilbert, Arizona 85296

## **DEVELOPMENT REIMBURSEMENT AGREEMENT**

THIS AGREEMENT is between the Town of Gilbert, Arizona, ("Gilbert") and EAST VALLEY INSTITUTE OF TECHNOLOGY (EVIT), a Political Subdivision of the State of Arizona, ("EVIT"), the lessee for the real property at 6625 South Power Road, Mesa, Arizona, at the corner of Power Road and Verona Avenue ("Intersection") which is located immediately adjacent to the Town of Gilbert ("Property").

### Recitals:

1. EVIT has developed the Property and desires to have a traffic signal at the Intersection.
2. Inasmuch as a new traffic signal at Power Road and Verona Avenue ("Traffic Signal") will provide traffic safety and circulation benefits both to and beyond the Property, Gilbert and EVIT have agreed to share the cost of the traffic signal.

## **TERMS OF AGREEMENT**

1. Gilbert shall design, purchase and install the Traffic Signal at the Intersection in accordance with the technical requirements of Gilbert ("Work"). Gilbert shall use its best efforts to complete the Work by August 15, 2015.
2. EVIT and Gilbert shall share the cost of the Work, with EVIT paying a maximum of seventy-five thousand dollars (\$75,000.00), representing a portion of the cost of the Work, which shall fully satisfy EVIT's obligation toward the installation of the Work.
3. On or before September 1, 2015, EVIT shall pay to Gilbert fifteen thousand dollars (\$15,000.00). Thereafter, on September 1st of each succeeding year up to and including September 1, 2019, EVIT shall pay to Gilbert fifteen thousand dollars (\$15,000.00) until the entire seventy-five thousand dollars (\$75,000.00) is paid in full.
4. Following completion of the Work, Gilbert shall be responsible for maintenance of the Traffic Signal for the life of the Traffic Signal.
5. This Agreement shall be subject to the provisions of A.R.S. § 38-511.
6. Unless Gilbert agrees in writing to extend the payment deadline for the EVIT's reimbursement to Gilbert for the cost of the Improvements, the failure of EVIT to pay in accordance with the foregoing deadlines will constitute a material breach of this Agreement.

7. Time is of the essence for the performance of this Agreement.

8. Should collection proceedings or litigation be necessary in order to enforce this Agreement, the prevailing party shall be awarded its reasonable attorneys fees and costs and collection costs incurred.

9. All notices, approvals and other communications provided for herein or given in connection herewith shall be validly given, made, delivered or served, if in writing, and delivered personally, sent by postage prepaid United States Mail, or sent by nationally recognized overnight courier (e.g., Federal Express, Airborne, UPS), and addressed to the recipient as follows:

Gilbert: Town of Gilbert  
50 East Civic Center Drive  
Gilbert, Arizona 85296  
Attention: Town Manager

Lessee: East Valley Institute of Technology  
6625 S. Power Road  
Mesa, Arizona 85212

or to such other addresses as a party may from time to time designate in writing and deliver in a like manner. Notices, approvals and other communications provided for herein shall be deemed delivered upon personal delivery or 24 hours following deposit with a nationally recognized overnight courier, as herein above provided, prepaid and addressed as set forth above.

11. This Agreement is entered into in Arizona and shall be construed and interpreted under the laws of the State of Arizona.

THIS SPACE INTENTIONALLY LEFT BLANK.

DATED the date and year first above written.

TOWN OF GILBERT

LESSEE

\_\_\_\_\_  
John W. Lewis  
Mayor

\_\_\_\_\_  
*Sally E. Downey*  
By: \_\_\_\_\_  
Its: *Superintendent/CEO*

ATTEST:

\_\_\_\_\_  
Catherine A. Templeton, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
L. Michael Hamblin  
Town Attorney

ACKNOWLEDGMENT

STATE OF ARIZONA       )  
                                      ) ss.  
County of Maricopa       )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, who acknowledged himself/herself to be \_\_\_\_\_, and that as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

ACKNOWLEDGMENT

STATE OF ARIZONA       )  
                                      ) ss.  
County of Maricopa       )

On this 13<sup>th</sup> day of April, 2015, before me, the undersigned Notary Public, personally appeared Sally E. Downey, who acknowledged himself/herself to be Superintendent/CSO, and that as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Barbara Spielbusch  
Notary Public

My Commission Expires:

March 1, 2018





## Council Communication

**TO:** Honorable Mayor and Councilmembers

**FROM:** Michael Hamblin, Town Attorney, 503-6027

**MEETING DATE:** May 14, 2015

**SUBJECT:** Cox Communications Arizona, LLC - Extension of Cable Television License

**STRATEGIC INITIATIVE:** Community Livability

Action required to maintain current cable/data/telecom service options available to Gilbert customers.

### **RECOMMENDED MOTION**

A motion to adopt a resolution approving extension of Cable License Agreement No. 2001-1003-0331 with Cox Communications Arizona, LLC extending the cable license agreement through June 30, 2015, and authorize the Mayor to execute the required documents.

### **BACKGROUND/DISCUSSION**

Resolution 3223 extended the Cable Television License of Cox Communications Arizona, LLC until May 25, 2014, from its initial expiration date of January 25, 2014. Gilbert and Cox agreed to negotiate a renewed license agreement; however, Cox appealed a determination by Gilbert that Cox had underpaid license fees owed pursuant to Chapter 18 of the Municipal Code. Pursuant to Resolutions 3246 and 3259, Gilbert and Cox agreed to extend the license. An appeal hearing was held before the Council on October 16, 2014. Resolution 3773 extended the Cable Television License through January 31, 2015; Resolution 3779 extended the Cable Television License through March 31, 2015; and Resolution 3789 extended the Cable Television License through June 1, 2015. Cox and Gilbert have been engaged in informal renewal negotiations in accordance with Section 626(h) of the federal Cable Act, but anticipate that negotiations cannot be completed before the expiration of the License. Therefore, Staff recommends an additional two month extension of the Cox Cable License.

The Resolution was reviewed for form by Michael Hamblin, Town Attorney.

### **FINANCIAL IMPACT**

There is no financial impact.

Financial impact reviewed by Laura Lorenzen, Budget and Financial Planning Analyst.

### **STAFF RECOMMENDATION**

Staff recommends adoption of a resolution to extend Cable License Agreement No. 2001-1003-0331 with Cox Communications Arizona, LLC extending the cable license agreement through June 30, 2015, and authorize the Mayor to execute the required documents.

Respectfully submitted,

Michael Hamblin  
Town Attorney

Attachments and Enclosures: Resolution

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF  
GILBERT, ARIZONA, EXTENDING THE CABLE  
TELEVISION LICENSE TERM OF COX COMMUNICATIONS  
ARIZONA, LLC; AND PROVIDING FOR REPEAL OF  
CONFLICTING RESOLUTIONS.**

WHEREAS, Cox Communications Arizona, LLC ("Cox") currently holds a cable television license ("License") from the Town of Gilbert, Arizona ("Gilbert"); and

WHEREAS, Cox 's License, as extended by Resolution 3789 that was passed and adopted by the Common Council on March 26, 2015, expires on May 31, 2015 at 11:59 pm; and

WHEREAS, Cox and Gilbert have been engaged in informal renewal negotiations in accordance with Section 626(h) of the federal Cable Act, but anticipate that negotiations cannot be completed before the expiration of the License; and

WHEREAS, it is understood by Gilbert that Cox concurs that the License term should be extended to allow sufficient time to complete negotiations with the understanding that Cox and Gilbert are committed to completing the negotiations within the term of this extension; however, neither Gilbert nor Cox prejudices or waives any rights afforded them under the Cable Act to either an informal or formal renewal process should negotiations fail; and

WHEREAS, the parties continue to reserve all rights under the formal procedures of Section 626 of the federal Cable Act and do not waive any rights related thereto; and

WHEREAS, it is in the public interest to extend the current License for an additional period of time so that cable service to the public will not be interrupted.

WHEREAS, based upon the foregoing, Gilbert is willing to extend the term of the License for an additional period of time, with the understanding that written acceptance from Cox to the extension be delivered to Gilbert within ten (10) days after receipt of notice of adoption of this Resolution.

NOW, THEREFORE, it is resolved by the Common Council of the Town of Gilbert, Arizona as follows:

1. That the Cable Television License between Gilbert and Cox, which, as extended by Resolution 3789 that was passed and adopted by the Common Council on March 26, 2015, expires on June 1, 2015, is hereby extended effective from June 1, 2015 through June 30, 2015.
2. The Town Clerk is hereby directed to provide Cox with an official copy of this Resolution, requesting Cox to provide its written acceptance of the

Resolution within ten (10) days after receipt of the notice by counter signing as indicated below.

3. All resolutions and parts of resolutions in conflict with this Resolution are hereby repealed.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

AYES: \_\_\_\_\_

NAYES: \_\_\_\_\_ ABSENT: \_\_\_\_\_

EXCUSED: \_\_\_\_\_ ABSTAINED: \_\_\_\_\_

APPROVED this \_\_\_\_\_ day of December, 2014.

\_\_\_\_\_  
John W. Lewis, Mayor

ATTEST:

\_\_\_\_\_  
Catherine A. Templeton, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael Hamblin, Town Attorney

ACCEPTED this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

COX COMMUNICATIONS ARIZONA, LLC

By: \_\_\_\_\_

Title: \_\_\_\_\_





## Council Communication

**TO:** Honorable Mayor and Councilmembers

**FROM:** L. Michael Hamblin, Town Attorney, 503-6027

**MEETING DATE:** May 14, 2015

**SUBJECT:** Cox Communications, LLC – Renewal of Cable License Agreement No. 2001-1003-0331 and Approval of Settlement Agreement

**STRATEGIC INITIATIVE:** Community Livability

This action is required to maintain current cable/data/telecom service options available to Gilbert Customers.

### **RECOMMENDED MOTION**

- A) A motion to adopt a resolution to approve a fifteen (15) year renewal of Cable License Agreement No. 2001-1003-0331 with Cox Communication, LLC.
- B) A motion to approve proposed settlement agreement with Cox Communication, LLC.

### **BACKGROUND/DISCUSSION**

The Town of Gilbert entered into Cable License Agreement No. 2001-1003-0331 with Cox Communications, LLC, (“Cox”) on January 26, 1999.

Gilbert conducted a License Fee Review covering three years related to Cox for the time period 2009, 2010, and 2011. The auditor found deficiencies in the payment of License Fees to Gilbert. Cox Communications protested some of the findings and a hearing was held before an independent hearing officer. The hearing officer issued findings and a decision, which were adopted by the Gilbert Town Manager. The Gilbert Town Manager’s decision was appealed by Cox to the Gilbert Town Council. After a hearing, the Gilbert Town Council upheld the Gilbert Town Manager’s decision. Cox then filed a lawsuit in Maricopa County Superior Court challenging the decision by the Gilbert Town Manager and Town Council.

Gilbert and Cox have been in negotiations to resolve all outstanding issues relating to the License Fee Review, the renewal of the License Agreement, and the Chapter 18 Cable

Communications provisions of the Gilbert Town Code. The license agreement has continued under a series of short term extensions, pending resolution. A tentative settlement agreement has been reached in which Cox agrees to pay the deficiencies, provide certain in-kind services to Gilbert, and dismiss the litigation with prejudice. The settlement agreement is contingent on the adoption of an amendment to Chapter 18 of the Town Code regarding (i) how the allocation of discounts on bundled services is handled related to cable revenues, and (ii) the payment of construction permit fees for work in Gilbert's rights-of-way.

The Settlement Agreement and License Agreement were reviewed for form by Special Counsel, Kelly Y. Schwab and Susan D. Goodwin.

### **FINANCIAL IMPACT**

As a result of the settlement agreement, Gilbert anticipates additional one-time revenue of \$483,975, of which \$83,975 has already been received.

The financial impact was reviewed by Laura Lorenzen, Management and Budget Analyst.

### **STAFF RECOMMENDATION**

Staff recommends approval of the fifteen (15) year renewal of Cable License Agreement No. 2001-1003-0331 and proposed settlement agreement with Cox Communication, LLC.

Respectfully submitted,

L. Michael Hamblin  
Town Attorney

**Approved By**

Michael Hamblin  
Michael Hamblin  
Laura Lorenzen

**Approval Date**

5/11/2015 12:27 PM  
5/11/2015 12:27 PM  
5/11/2015 5:50 PM

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF  
GILBERT, ARIZONA, RENEWING THE CABLE TELEVISION  
LICENSE OF COX COMMUNICATIONS ARIZONA, LLC;  
AND PROVIDING FOR REPEAL OF ANY CONFLICTING  
RESOLUTIONS.**

WHEREAS, Cox Communications Arizona, LLC ("Cox") currently holds a cable television license ("License") from the Town of Gilbert, Arizona ("Gilbert"); and

WHEREAS, Cox 's License, as extended by Resolution 3789 that was passed and adopted by the Common Council on March 26, 2015, expires on May 31, 2015 at 11:59 pm; and

WHEREAS, Cox and Gilbert representatives have been engaged in informal renewal negotiations in accordance with Section 626(h) of the federal Cable Act, and have reached agreement for the proposed accompanying cable television license.

NOW, THEREFORE, it is resolved by the Common Council of the Town of Gilbert, Arizona as follows:

1. That the Cable Television License between Gilbert and Cox, which, was extended by Resolution 3789 that was passed and adopted by the Common Council on March 26, 2015, expires on June 1, 2015, is hereby renewed for a period of fifteen (15) years, through May 31, 2030.

2. The Town Clerk is hereby directed to provide Cox with an official copy of this Resolution, requesting Cox to provide its written acceptance of the Resolution within ten (10) days after receipt of the notice by counter signing as indicated below.

3. Any resolutions and parts of resolutions in conflict with this Resolution are hereby repealed.

Resolution No. \_\_\_\_\_  
Page \_\_\_\_ of \_\_\_\_

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF GILBERT,  
ARIZONA THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

AYES: \_\_\_\_\_

NAYES: \_\_\_\_\_ ABSENT: \_\_\_\_\_

EXCUSED: \_\_\_\_\_ ABSTAINED: \_\_\_\_\_

APPROVED this \_\_\_\_\_ day of December, 2014.

\_\_\_\_\_  
John W. Lewis, Mayor

ATTEST:

\_\_\_\_\_  
Catherine A. Templeton, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael Hamblin, Town Attorney

ACCEPTED this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

COX COMMUNICATIONS ARIZONA, LLC

By: \_\_\_\_\_

Title: \_\_\_\_\_

**CABLE SYSTEM LICENSE**

**FOR**

**TOWN OF GILBERT, ARIZONA**  
**CABLE LICENSE AGREEMENT NO. 2001-1003-0331**

**AND**

**COX COMMUNICATIONS ARIZONA, LLC**

**SUBMITTED SUBJECT TO RULE 408, ARIZONA RULES OF EVIDENCE  
REGARDING THE INADMISSIBILITY OF SETTLEMENT  
NEGOTIATIONS AS EVIDENCE AT TRIAL**

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## **CABLE SYSTEM LICENSE**

THIS CABLE SYSTEM LICENSE (hereinafter the "License") is made and entered into this 14th day of May, 2015, by and between the Town of Gilbert, Arizona, a municipal corporation of the State of Arizona (hereinafter the "Licensor") and Cox Communications Arizona, L.L.C. (hereinafter the "Licensee").

### **PREAMBLE**

Pursuant to Chapter 18 of Licensor's Municipal Code (the "Ordinance"), the Licensor granted a non-exclusive license to operate, construct, maintain, and reconstruct a Cable System within the corporate limits of Licensor. Licensor and Licensee desire to renew that License on the terms and conditions set forth in this License.

In accordance with the Ordinance, Licensor approves this License with Licensee to comply with the Town of Gilbert Municipal Code, including the Ordinance, Arizona Revised Statutes Title 9 Chapter 5 Article 1.1 and 47 U.S.C. §§ 521, *et seq.* ("Applicable Law") and based on a request received on or about January 27, 2011, from Licensee for a renewal of its License.

### **STATEMENT OF INTENT AND PURPOSE**

Licensor intends, by the approval of this License, to bring about the further expansion, improvement and upgrade of Licensee's Cable System and the continued operation of it to keep current with the changes in technology, services and delivery in the cable industry. Such development can contribute significantly to the communication needs and desires of the residents and citizens of the Licensor and the public generally. Further, Licensor may achieve better utilization and improvement of public services and enhanced economic development with the continued development and operation of Licensee's Cable System. It is Licensor's intent to regularly work together with Licensee to ensure that its services accomplish this purpose.

Approval of this License is, in the judgment of the Licensor, in the best interests of the Town of Gilbert and its residents.

### **FINDINGS**

In the review of the request for renewal by Licensee and information gathered by Licensor and negotiations related thereto, the Licensor finds that the issuance of the license is in the best interest of Licensor and its residents.

NOW, THEREFORE, in consideration of the faithful performance and strict observance by the Licensee of all the terms hereinafter set forth or provided for, and in consideration of the grant to the Licensee of this License by the Licensor, the Licensor and Licensee agree as follows:



## **SECTION 1. GENERAL PROVISIONS**

1.1 Capitalized terms phrases, words and their derivatives used in this License Agreement shall have the meanings given them consistent with 47 U.S.C. §§ 521, *et seq.* Arizona Revised Statute A.R.S. Title 9, Chapter 5, and the Ordinance (as defined above), unless otherwise defined herein.

1.2 Notwithstanding the definition in Section 18-1 of the Ordinance, for the purposes of this License a "Standard Drop" is no more than 125 feet in length.

1.3 All notices, reports, or demands required or permitted to be given under this License and/or the Ordinance shall be in writing and shall be deemed to be given when received by the party designated below, sent via registered, certified mail, or overnight courier with cost or postage prepaid thereon, return receipt requested, addressed to the party to which notice, report or demand is being given, as follows:

If to Licensors:           Town of Gilbert, Arizona  
                                  Town Manager  
                                  50 East Civic Center Drive, Second Floor  
                                  Gilbert, AZ 85296

If to Licensee:           Michael Stull  
                                  1550 W. Deer Valley Road  
                                  Phoenix, Arizona 85027

Such addresses may be changed by either party upon notice to the other party given as provided in this Section.

## **SECTION 2. GRANT OF LICENSE**

2.1 This License is executed in accordance with the provisions of the Ordinance and supersedes and extinguishes any other License or other authorization held by Licensee to operate a Cable System or provide Cable Service within the corporate limits of Licensors after the Effective Date. This License provides Licensee with the authority, right, and privilege to construct, reconstruct, operate, and maintain a Cable System within the Licensors in accordance with the terms and provisions of this License and the Ordinance. Unless expressly authorized by the Ordinance and expressly set forth herein, this License shall not modify any requirement of the Ordinance.

2.2 Licensee acknowledges and accepts the right of the Licensors to issue this renewed License granted pursuant to this License. Licensee has not accepted this License with intent to act contrary to the provisions herein and represents and warrants that, as long as it operates the Cable system, it will be bound by the lawful terms and conditions of this License.

## **SECTION 3. EFFECTIVE DATE OF RENEWAL**

This License shall be effective on June 1, 2015, in compliance with the terms and conditions of Section 18-38 of the Ordinance (the "Effective Date"). The grant of this License is further contingent upon the satisfaction of the requirements of the Ordinance, including the filing by Licensee with the Town clerk of the written acceptance of the License, letter of credit, construction bond and/or insurance policies provided for in the Ordinance, except that if such filing does not occur within twenty (20) days after the Effective Date, the Licensors may, in its sole discretion, declare this License and the License provided for herein to be null and void.

#### **SECTION 4. TERM**

The term of this License shall be for an initial period of fifteen (15) years commencing on the Effective Date, unless renewed or terminated prior to the expiration date in accordance with the Ordinance, this License, and applicable State and federal law.

#### **SECTION 5. SYSTEM DESIGN**

In accordance with the Ordinance, Licensee shall have completed all necessary steps to construct, upgrade, and thereafter operate and maintain the Cable System, subject to all applicable technical standards of the FCC as published in subpart K of 47 C.F.R. §76. To the extent those standards are altered, modified, or amended during the term of this License, the Licensee shall comply with such altered, modified or amended standards within a reasonable period after such standards become effective. The Licensors shall have, upon written request, the right to obtain a copy of tests and records required to be performed pursuant to the FCC's rules and the License.

Licensee reserves the right to alter, adjust, modify, rebuild, upgrade, redesign, or otherwise reconfigure the Cable System at any time during the term of the License. Notwithstanding the above, Licensee agrees that no alteration, adjustment, modification, rebuild, upgrade, redesign, or other reconfiguration of the Cable System shall have the effect of reducing the technical capabilities of the Cable System from those that exist on the Effective Date of this License.

#### **SECTION 6. GENERAL OPERATING PROVISIONS**

6.1 In order to assist Licensors in its oversight responsibilities and promote the sharing of information between Licensors and Licensee, Licensors or Licensee may schedule periodic meetings every three (3) years or more frequently pursuant to Section 18-36 of the Ordinance.

6.2 Licensee shall retain the power to select programming to offer to Subscribers. However, Licensee shall, at a minimum, use good faith efforts to select programming that falls within the following broad categories of programming: educational; news and information; sports; entertainment (including movies); family- or children-oriented; art, culture, and performing arts; science/documentary; weather information; and public affairs.

6.3. Licensee shall comply with the FCC's Emergency Alert System (EAS) rules and regulations, including any state approved plans by the FCC.

6.4. In the performance of this License, Licensee shall not discriminate unfairly against any person on the ground of or because of race, creed, color, national origin or ancestry, gender, religion or political opinion or affiliation, income of residents in any area of the Licensor, or age. Licensee shall comply at all times with all other valid applicable federal, State and local laws, and all federal and State executive and administrative orders relating to non-discrimination.

## **SECTION 7. ACCESS CHANNELS, ACCESS COSTS, EQUIPMENT AND FACILITIES**

7.1 The Town shall have the full responsibility for the production and development of programming and shall also have the responsibility of purchasing and maintaining equipment and facilities used for the production of programming. However, the Licensee agrees that it shall use its best efforts to provide full cooperation and assistance, training or other such services as may be needed and requested by the Town. In any event in which Licensee believes that its services are in the form of operating costs, it will inform the Town of any such costs that may be deducted by it from the license fee or subscriber pass-through fees to be paid to the Town.

7.2 The Licensee assures the Licensor that its equipment, facilities and services as well as personnel will accept the programming provided by the Licensor for transmission on the cable system on the appropriate and designated access channels with the same prevailing quality, functionality and identification as commercial channels. The Licensee, without entitlement to offset or other credit, will identify the access and public safety channels and their programming available pursuant to Section 7.3, in any printed or electronic programming guides in the same manner in which it identifies channels and programming available on commercial channels offered on its Cable system, to the extent that the Licensor makes such information available to the Licensee's guide service in a timely fashion and in a manner consistent with the Licensee's guide-service policies.

7.3 Except as otherwise provided in this Section 7.3, Licensee shall comply with Sections 18-31 through 18-34 of the Ordinance. Licensee shall provide channel capacity for one government access channel (dedicated for Licensor use) and one educational access channel, both of which shall be carried in the basic service tier. Licensee shall also provide channel capacity in its digital tier for one public safety channel. All educational and governmental channels shall be managed and administered by the Licensor, but the Licensor may designate operational responsibility for the educational access channel to the Gilbert School District.

## **SECTION 8. SERVICES TO PUBLIC BUILDINGS**

8.1 In accordance with Section 18-34 of the Ordinance, Licensee will make available to Licensors, without charge, services to public buildings, the locations identified in Exhibit A to this License as updated periodically by Licensors:

8.2 Any services requested in addition to Basic Service will be charged at Licensee's prevailing retail fees, including appropriate fees and taxes.

8.3 The Basic Service provided pursuant to this Section shall not be used for commercial purposes and such outlets shall not be located in areas open to the public. Licensors shall take reasonable precautions to prevent any inappropriate use of the Cable System that results in loss or damage to Licensee. Licensee shall not be required to wire the entire facility or to provide more than one (1) outlet at no cost. Licensors shall not be required to provide an outlet, as required by this Section longer than a Standard Drop unless Licensors or building owner/occupant agrees to pay in advance the incremental cost of any necessary extension or installation.

## **SECTION 9. RATES AND CHARGES**

Licensee shall comply at all times with the provisions of the Cable Act and FCC rules and regulations applicable to rates and charges for any Cable Service and the associated terms and conditions for the provision of any Cable Service.

## **SECTION 10. CUSTOMER SERVICE AND PRIVACY PROTECTION**

10.1 Licensee shall comply with the Subscriber service and privacy protection provisions in the Ordinance and 47 C.F.R. § 76.309 of the Federal Communications Commission's Rules and Regulations, as such may be amended from time to time.

10.2 Licensee shall comply at all times with the provisions of the Cable Act and FCC rules and regulations applicable to Subscriber bills.

10.3 Licensee shall comply at all times with the Subscriber privacy provisions of the Ordinance, FCC Rules and Regulations, the Cable Act or other Applicable Law. Licensee shall cooperate with the Licensors so as to ensure the Licensors' ability to enforce the terms and conditions of this provision to the extent consistent with Applicable Law.

## **SECTION 11. LICENSE FEE**

Licensee shall pay a license fee to Licensors as required by the Ordinance, Section 18-26.

## **SECTION 12. LICENSE NOT EXCLUSIVE**

This License shall not be construed as limiting the right of Licensors, through its proper offices, and in accordance with the Ordinance and Applicable Law, to grant other Licenses similar to or containing rights, privileges or authority different from the rights, privileges and authority herein set forth; provided, however, that such additional Licenses shall not be on terms and conditions more favorable or less burdensome to such new operator than those applied to Licensee, nor operate to materially modify, revoke or terminate any rights granted to Licensee herein and shall be in accord with the provisions of the Ordinance. Should any change in State or federal law have the effect of materially altering the terms and conditions of this License by operation of law making it commercially impracticable for Licensee to continue the provision of Cable services in the Licensors, then the parties agree to negotiate in good faith to modify this License to their mutual satisfaction to ameliorate the negative effect on Licensee of the material alteration. Any such modification to this License shall be in writing and signed by both parties. If the parties do not reach agreement to modify the License, each shall have all the rights available to it under applicable law.

## **SECTION 13. INCORPORATION OF ORDINANCE AND CONFLICT WITH ORDINANCE**

The provisions of the Ordinance are hereby incorporated herein by reference as if set out herein in full, and shall form part of the terms and conditions of this License. In the event of any conflict between the terms and conditions of this License and the provisions of the Ordinance, the provisions of this License shall control.

## **SECTION 14. PROCEDURE FOR ENFORCING LICENSE**

The procedures for enforcing violations or breaches of this License and/or the Ordinance shall be consistent with the procedures set forth in the Ordinance.

## **SECTION 15. LIABILITY AND INSURANCE**

15.1 In accordance with Section 18-82 of the Ordinance, Licensee shall furnish to Licensors certificates of insurance for all types of insurance required under the Ordinance within twenty (20) days of the Effective Date of this License. Failure to furnish said certificates of insurance in a timely manner shall constitute a violation of this License and said License shall be null and void.

15.2 Neither the provisions of this License or the Ordinance nor any damages recovered by Licensors hereunder shall limit the liability of Licensee under any License issued hereunder or for damages.

15.3 Licensee agrees to indemnify, save harmless and defend Licensors, in accordance with the Ordinance.

## **SECTION 16. LETTER OF CREDIT**

16.1. As required by the Ordinance and this License, the Licensee shall comply with the Letter of Credit, Section 18-83 provision of the Ordinance by providing such letter of credit and in a form as may be approved by the Licensors and acceptable to Licensors's legal representative.

16.2 The letter of credit shall provide that the Licensors may recover from the principal and surety any and all liquidated damages and/or compensatory damages incurred by Licensors for Licensee's demonstrated violations of this License, after notice and opportunity to cure, in accordance with the Ordinance.

16.3. The letter of credit shall be in the amount of twenty-five thousand dollars (\$25,000). Licensee shall not reduce, cancel or materially change said letter of credit from the requirement contained herein without prior written permission of Licensors.

## **SECTION 17. FRANCHISE RENEWAL**

Any renewal shall be in accordance with the renewal provisions of Section 626 of the Cable Act and as further described in the Ordinance. To the extent Section 626 of the Cable Act is no longer applicable to renewals, Licensors and Licensee shall conduct the renewal process pursuant to the terms and provisions of Section 626 of the Cable Act as it existed on the Effective Date of this License.

## **SECTION 18. GOVERNING LAW**

This License shall be deemed to be executed in the State of Arizona, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Arizona as applicable to contracts entered into and performed entirely within the State. This License shall also be subject to and complied with the federal Cable Act and rules of the Federal Communications Commission.

## **SECTION 19. MISCELLANEOUS**

19.1 This License is made with the understanding that its provisions are controlled by Applicable Law. To the extent that there is any inconsistency between a provision of this License and the Ordinance, this License shall control.

19.2 This License shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted transferees and assigns. All of the provisions of this License apply to Licensee, its successors, and assigns.

19.3 No failure on the part of Licensors to exercise, and no delay in exercising, any right or remedy hereunder including, without limitation, the rights and remedies set forth in the

Ordinance and this License, shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any other right or remedy, all subject to the conditions and limitations established in this License. The rights and remedies provided herein including, without limitation, the rights and remedies set forth in the Ordinance and this License, are cumulative and not exclusive of any remedies provided by law, and nothing contained in this License shall impair any of the rights or remedies of Licensor under Applicable Law, subject in each case to the terms and conditions of this License.

19.4 If any section, subsection, sentence, clause, phrase, or other portion of the Ordinance or this License is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

19.5 This License is made between Licensee and Licensor and is not intended to and does not create any rights or interests for any other party including without limitation any rights as a third party beneficiary of this License.

19.6 This License embodies the entire understanding and agreement of Licensor and Licensee, with respect to the matters covered by this License and supersedes all prior agreements and understandings between Licensor and Licensee, with respect to such matters. It may be amended only by a writing signed by both parties. In the event of a conflict between this License and any Licensor ordinance or regulation, this License shall prevail.

19.7 Notwithstanding any other provisions of this License, Licensee shall not be liable for delay in performance of, or failure to perform, in whole or in part, its obligations pursuant to this License due to strike, unavailability of materials, or equipment, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, civil disturbance, sabotage or vandalism, customer tampering or interference, act of public enemy, accident, fire, flood, storm or other events, to the extent that such causes or other events are beyond the control of Licensee.

19.8 The Town agrees to treat as confidential any books or records that constitute proprietary or confidential information under federal or state law, to the extent Licensee makes the Town aware of such confidentiality. Licensee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information and shall provide a brief written explanation as to why such information is confidential under federal or State law. If the Town believes it must release any such confidential books and records in the course of enforcing this License, or for any other reason, it shall advise Licensee in advance so that Licensee may take appropriate steps to protect its interests. If the Town receives a demand from any person for disclosure of any information designated by licensee as confidential, the Town shall, so far as consistent with applicable law, advise Licensee and provide Licensee with a copy of any written request by the party demanding access to such information within a reasonable period of time. Until otherwise ordered by a court or agency of competent jurisdiction, the Town agrees that, to the extent permitted by federal and State law, it shall deny access to any of Licensee's books and records marked confidential as set forth above to any person. Licensee shall pay upon demand all attorneys fees,

costs and other expenses incurred by Licensor as a result of a request by Licensee that the confidential document not be disclosed.

## **SECTION 20. MODIFICATION**

No provisions of this License shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by Licensor and Licensee, which amendment shall be authorized on behalf of Licensor through the adoption of an appropriate resolution or order by Licensor, as required by law.

## **SECTION 21. ACCEPTANCE AND EFFECTIVE DATE.**

This License shall be effective upon satisfaction of the requirements of the Ordinance and Section 3 of this License and shall supersede any existing License between Licensor and Licensee.

IN WITNESS WHEREOF, the Licensor and Licensee have executed this License on the date and year first below written.

TOWN OF GILBERT, ARIZONA

By: John D. Lewis, Mayor

Date: \_\_\_\_\_

STATE OF ARIZONA       )  
  ) ss.  
COUNTY OF Maricopa    )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2015, by John D. Lewis, the Mayor of Gilbert, Arizona on behalf of the Town of Gilbert, Arizona.

\_\_\_\_\_  
Notary Public

ATTEST:

\_\_\_\_\_  
Catherine Templeton, Town Clerk



APPROVED AS TO FORM:

By: \_\_\_\_\_

L. Michael Hamblin

Town Attorney

LICENSEE

By: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2015, by  
\_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_ on behalf of the Licensee.

\_\_\_\_\_  
Notary Public

**EXHIBIT A.**  
**PUBLIC BUILDINGS TO BE PROVIDED**  
**WITH FREE SERVICE**

Note: Licensor reserves the right to update and modify this Exhibit A by giving a thirty (30) day written notice to Licensee specifying additional public buildings to receive service, consistent with the requirements of this License Agreement and the Ordinance.

1. Municipal II, 90 E. Civic Center Dr.
2. Public Works North, 525 N. Lindsay Rd.
3. Tech Center, 529 N. Lindsay Rd.
4. South East Regional Library, 775 N. Greenfield Rd.
5. Perry Branch Library, 1965 E. Queen Creek Rd.
6. Greenfield Pool, 35 S. Greenfield Rd.
7. Mesquite Aquatic Center, 100 W. Mesquite St.
8. Perry Pool, 1775 E. Queen Creek Rd.
9. Williams Field Pool, 1900 S. Higley Rd.
10. North Water Treatment Plant, 2865 E. Guadalupe Rd.
11. Santan Vista Water Treatment Plant, 3695 E. Ocotillo Rd.

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement (“Agreement”) is made and entered into this 14th day of May, 2015, by and between Cox Communications, LLC, a Delaware corporation (“Cox”) and the Town of Gilbert, a municipal corporation and political subdivision of the State of Arizona (“Gilbert”), Patrick Banger, Gilbert Town Manager, John Lewis, Gilbert Town Mayor, Jordan Ray, Gilbert Vice Mayor, Eddie Cook, Gilbert Councilmember, Jenn Daniels, Gilbert Councilmember, Victor Petersen, Gilbert Councilmember, Brigitte Peterson, Gilbert Councilmember, and Jared Taylor, Gilbert Councilmember (collectively, “Gilbert Defendants”).

### **RECITALS**

- A. In 1999, Cox and Gilbert entered into a Cable Television License Agreement that granted Cox a license to use the public streets and to provide cable services in Gilbert until 2014 (“License Agreement”);
- B. Under the License Agreement and the Gilbert Municipal Code, Cox is required to pay to the Town an amount no less than five percent (5%) of the gross annual revenues from cable services in the Town of Gilbert.
- C. In 2012, Gilbert hired Lewis & Associates to conduct a license fee review of the license fees paid by Cox (“License Fee Review”) on cable gross revenues for the period of 2009 through 2011 (“License Fee Review Period”).
- D. The License Fee Review found that there was a deficiency in the cable license fees owed by Cox to Gilbert.
- E. Cox appealed the finding of deficiency in the License Fee Review to the Gilbert Town Manager; the Gilbert Town Manager adopted the findings and recommended decision of an independent hearing officer made after a hearing required by the Gilbert Municipal Code.
- F. Cox appealed the decision of the Gilbert Town Manager to the Gilbert Town Council; the Gilbert Town Council upheld the Town Manager’s decision.
- G. Cox filed litigation complaint entitled *Cox Communications, LLC v. Town of Gilbert, et al.*, CV2014-014525 (“Lawsuit”) in the Maricopa County Superior Court challenging the decision of the Town Manager and Gilbert Council.
- H. The parties desire to resolve all outstanding issues by entering into this Settlement Agreement.

### **AGREEMENT**

Now, therefore, in consideration of the foregoing recitals and mutual promises and agreements set forth hereafter and for other good and valuable consideration, the Parties agree as follows:

**1. Recitals:**

The Recitals are confirmed to be true and accurate and are hereby incorporated by reference into this Agreement.

**2. Settlement Obligations:**

2.1 Cox agrees to do the following:

2.1.1 Pay a "Total Settlement Amount" of \$483,975 (which includes the \$83,975 initial settlement amount already paid by Cox to Gilbert) to Gilbert within ten (10) days of Gilbert's approval of this Agreement. This will fully satisfy license fees and all other amounts that Cox may owe Gilbert for all issues in the License Fee Review and for the License Fee Review Period.

2.1.2 Provide in-kind services to Gilbert and its residents as specified on the attached Exhibit A.

2.1.3 Waive, and not exercise, its right to recover all, or any part of, the Total Settlement Amount (or cost of plant extension) from its subscribers, as otherwise permitted by applicable law, including without limitation through a line item tax/fee on cable subscribers' bills.

2.1.4 Within ten (10) days of Gilbert's approval of this Agreement, file a motion to dismiss with prejudice all administrative and judicial actions relating to the audit findings, including *Cox Communications Arizona, LLC v. Town of Gilbert et al.*, CV-2014-014525.

2.2 Gilbert agrees to do the following:

2.2.1 Accept the Settlement Amount and the in-kind services, set forth in Exhibit A, as full and final settlement of any deficiencies relating to the License Fee Review, including interest and penalties.

2.2.2 Agree that the terms of this Settlement Agreement will govern the allocation of bundling discounts as to the revenue categories of cable, telephone, and internet and the terms of this Settlement Agreement shall not apply to Hearing Officer Skelley's Order as adopted by the Gilbert Town Manager or the October 30, 2014, Gilbert Council Decision and Findings to (i) the License Review Period, (ii) from and after December 31, 2011 to the effective date of the renewal of the License Agreement, or (iii) the renewed License Agreement.

2.3 Both parties agree:

2.3.1 This Settlement Agreement shall not become effective until all of the following have occurred:

- a. The amendment to the Gilbert Municipal Code attached hereto as Exhibit B is adopted.
  - b. The License Agreement between the Town of Gilbert and Cox attached hereto as Exhibit C is approved by the Gilbert Town Council in accordance with applicable law.
  - c. The Total Settlement Amount has been paid to Gilbert.
- 2.4.2 Not to allocate any of the Total Settlement Amount to Finding A.1. in the License Fee Review (the bundling issue), or to any other finding in the License Fee Review, including Finding C (interest).

### **3. Mutual Release:**

As and for additional consideration of the terms, conditions, and mutual releases contained in this Agreement, the Parties agree that:

- 3.1 Upon execution of this Agreement and the fulfillment of Gilbert's obligations hereunder, Cox (including its agents, attorneys, affiliates, partners, employees, directors, assigns, transferees, insurers, and successors in interest) hereby releases, remises, acquits, and forever discharges Gilbert, Gilbert Defendants, and its agents, attorneys, affiliates, partners, employees, directors, assigns, transferees, insurers, and successors in interest, from any and all liability, debt, claim, right, action, demand, covenant, contract, controversy, agreement, promise, omission, damage, execution, cause of action and suit, both in law and in equity of whatever kind or nature, arising out of, connected with, directly or indirectly based on, or in any way involving the claims alleged in the Lawsuit, whether such claims are presently known or unknown.
- 3.2 Upon execution of this Agreement and fulfillment of Cox's obligations hereunder, Gilbert and Gilbert Defendants (including its agents, attorneys, affiliates, partners, employees, directors, assigns, transferees, insurers, and successors in interest), hereby release, remise, acquit, and forever discharge Cox and its agents, attorneys, affiliates, partners, employees, directors, assigns, transferees, insurers, and successors in interest, from any and all liability, debt, claim, right, action, demand, covenant, contract, controversy, agreement, promise, omission, damage, execution, cause of action and suit, both in law and in equity, of whatever kind or nature, arising out of, connected with, directly or indirectly based on, or in any way involving the claims alleged in the Lawsuit, whether such claims are presently known or unknown.

### **4. Governing Law:**

This Agreement shall be interpreted and governed in accordance with the laws of the State of Arizona. All Parties have reviewed and participated in the drafting of this Agreement, and no language or provision of this Agreement shall be construed in favor or against a party based on who drafted the language or provision.

**5. Dismissal of Complaint; Attorney's Fees and Costs:**

After execution of this Agreement and within thirty (30) days of Cox's payment of the total Settlement Amount, counsel for Cox shall execute and file with the Maricopa County Superior Court a dismissal with prejudice of the lawsuit and an order of dismissal (the "Order"). Cox shall take all actions necessary to insure that the Order is entered by a Judge of the Maricopa County Superior Court. Each Party shall bear its own attorney's fees and costs in connection with the lawsuit and the negotiation, preparation and execution of this Agreement.

**6. Knowing and Voluntary Execution:**

By executing this Agreement, the Parties expressly represent that they have carefully read this Agreement in its entirety, that they have had an opportunity to discuss the provisions of this Agreement with their respective attorneys, that they understand and agree to all of the Agreement's provisions, and that they have executed the Agreement knowingly, voluntarily, and without any duress, compulsion, or undue influence.

**7. Non-Admission of Liability:**

By entering into this Agreement, none of the parties admit any liability or wrongdoing whatsoever and any such liability or wrongdoing is expressly denied. This Agreement is executed as a compromise of any and all disputed or non-disputed claims between the parties.

**8. Severability:**

The provisions of this Agreement are not severable. In the event any provision of this Agreement is held void, voidable, or unenforceable, the remaining provisions shall become void and of no force nor effect.

**9. Attorney's Fees; Enforcement of this Agreement:**

In the event proceedings are instituted to enforce, remedy, prevent, or obtain relief from a breach of this Agreement, the prevailing party shall recover all such reasonable attorneys' fees and costs, including reasonable expert fees, incurred in each and every proceeding, including any and all appeals or petitions therefrom. It is further agreed that Maricopa County, Arizona, shall be the venue for any proceeding brought to enforce this Agreement.

**10. Section Headings:**

Section headings are for reference only and shall not affect the interpretation of any provision in this Agreement.

**11. Authority of Signatory to Bind Party:**

By their signatures hereto, the Parties warrant that this Agreement has been duly authorized and that the signatories are competent to bind the Parties.

**12. Counterparts:**

This Agreement may be executed in one or more counterparts or duplicates, and via facsimile, each of which shall be deemed to be an original copy of this Agreement and all of which, when taken together, shall be deemed to constitute one and the same agreement.

COX COMMUNICATIONS, LLC

\_\_\_\_\_  
Date

\_\_\_\_\_  
John L. Wolf, Senior Vice President and  
General Manager, SW  
Attorney for Cox Communications, LLC

TOWN OF GILBERT, ARIZONA

\_\_\_\_\_  
Date

\_\_\_\_\_  
Hon. John W. Lewis, Mayor

**APPROVED AS TO FORM:**

OSBORN MALEDON

\_\_\_\_\_  
Randall C. Nelson

TOWN OF GILBERT

\_\_\_\_\_  
L. Michael Hamblin, Town Attorney

## **EXHIBIT A**

### **1. Free Advertising on Cox with a value of \$75,000.**

- Cox will provide ad avails to the Town of Gilbert on a “cross channel” basis during the 18 months following final approval of the settlement agreement. Cross channel means that the spots will not run on a specified channel at a guaranteed time but will run “cross channel”, valley wide on any of the channels that Cox provides local ad insertion on, and will run in available time slots.
- Town Staff and Cox will mutually determine the monthly schedule for airing the spots. Based on availability at the time of scheduling, Cox will accommodate the Town’s requests to air the spots during the desired months. (Cross channel spots may not be available in certain months and may be limited in certain months.)
- The Town will provide Cox the spots to be aired in a format, and of a quality, that is acceptable to Cox to be aired.

**Value:** Cox will provide a total number of ad avails over the 18 months so that the Town receives a total value of **\$75,000**

### **2. Enrollment in Connect to Compete program with a value of \$10,000.**

- Cox will co-host a **Connect to Compete** internet service enrollment event in Gilbert in 2015 at a location TBD with any combination of interested school district(s) within the Town (Gilbert Unified, Chandler Unified and Higley Unified).
- Cox will connect eligible student families (student who is eligible for free school lunch program) within the Town with the **Connect to Compete** internet service provided by Cox (5 mbps at \$9.95/month; free install; free modem rental; and no credit check).
- Cox will also provide up to 100 refurbished PCs at a cost of only \$10 per family for any families who enroll in the **Connect to Compete** program.
- Cox will jointly promote the enrollment event with the Town and school district(s) and facilitate program enrollment and computer distribution at the event.

**Value:** **\$10,000** for the computers, plus the unquantified value of Cox’s subsidized rate for the monthly **Connect to Compete** internet service for each family connected through the enrollment event and the unquantified value of joint promotion support and media support.

### **3. Extension of hybrid fiber coax plant to Town Facilities with a value of \$9,000.**

- Notwithstanding line extension provisions in the Town Code and Renewal License, within 120 days after final approval of the definitive settlement agreement Cox will at its cost extend its hybrid fiber coax plant to provide one activated connection to each of two Town buildings: Southeast Regional Library, 775 N Greenfield Road, and McQueen Park Activity Center, 510 N Horne Street.
- This obligation is subject to circumstances beyond Cox’s reasonable control.

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Cox

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TOG



## **EXHIBIT B**

### **Amendment to Gilbert Municipal Code**

**(To be included as an Exhibit once it has been passed by Gilbert Town Council and signed.)**

**EXHIBIT C**

**License Agreement**

**(To be included as an Exhibit once it has been signed by all parties)**



## Council Communication

**TO:** Honorable Mayor and Councilmembers

**FROM:** Brian Border, P.E., Project Coordinator, 480-503-6937

**MEETING DATE:** May 14, 2015

**SUBJECT:** Declare bids for FY 2016 improvements in Parkway Improvement Districts Nos. 07-03, 07-04, 07-09 & 07-11, and award contract Nos. 2015-8003-0673, 2015-8003-0674, 2015-8003-0675 and 2015-8003-0676.

**STRATEGIC INITIATIVE:** Community Livability

These projects support Gilbert's Community Livability as they provide aesthetic amenities to the PKID neighborhoods and surrounding areas.

### **RECOMMENDED MOTION**

A motion to reject all bids but the bid of the lowest and best responsible bidder, waive clerical errors, and award contracts for the work as follows:

1. Contract No. 2015-8003-0673 with Somerset Contracting in the amount of \$202,127.82 for work in PK No. 07-03, and,
2. Contract No. 2015-8003-0674 with Somerset Contracting in the amount of \$42,023.80 for work in PK No. 07-04 and,
3. Contract No. 2015-8003-0675 with Somerset Contracting in the amount of \$31,281.32 for work in PK No. 07-09 and,
4. Contract No. 2015-8003-0676 with Somerset Contracting in the amount of \$15,435.60 for work in PK No. 07-11 and authorize the Mayor to execute the required documents.

### **BACKGROUND/DISCUSSION**

Gilbert formed nine (9) new Parkway Improvement Districts (PKIDs) in 2007 for purposes of installing new irrigation systems, landscaping, and making other improvements to the retention basin/park areas in residential neighborhoods. Gilbert Town Council has previously approved plans for improvements. The Improvements are intended to be made in phases over the next few years. The Landscape Architect retained by Gilbert, DM Designs, LLC prepared new plans and specifications for the FY2015-2016 work which divides the work into four (4) separate bid packages to provide maximum flexibility to award the scope of work.

In April 2014, a total of four (4) bids were publicly opened for these projects. The lowest responsive and responsible bid results are as follows:

PK NO. 07-03	Somerset Contracting, LLC	\$ 189,938.10 (Base Bid)
	Somerset Contracting, LLC	\$ 12,189.72 (Bid Alternate)
	Total	\$ 202,127.82 (Total Bid)

The project includes complete irrigation system replacement as well as complete replacement of shrub plantings as well as minor sidewalk and concrete work. A new light pole for the existing playground will also be added.

PK NO. 07-04	Somerset Contracting, LLC	\$ 42,023.80
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The project includes complete replacement of the irrigation system as well as new shrub plantings.

PK NO. 07-09	Somerset Contracting, LLC	\$ 31,281.32
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The project includes replacement of the turf irrigation system as well as a new concrete header separating turf and decomposed granite.

PK NO. 07-11	Somerset Contracting, LLC	\$ 15,435.60
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The project includes replacement of the existing turf irrigation system.

The following is the remaining schedule for award of contracts:

- May 26<sup>th</sup> & June 2<sup>nd</sup> Notice of Award for FY16 Improvements published in the Arizona Republic
- May 26<sup>th</sup> – June 10<sup>th</sup> Protest Period for FY16 Improvements
- June 25<sup>th</sup> Council to report on Protest Period
  - If no written notices of objections are found, contracts are awarded
  - If written notices of objections are found, Council may move to award or reject the contract

The Contracts were reviewed for form by Special Counsel Susan Goodwin.

## **FINANCIAL IMPACT**

Each neighborhood determined the amount they wanted to allocate towards FY 2015-2016 improvements during the budget process in the winter of 2014-2015. The cost of these improvements is assessed in the home owner's property tax bill.

The following table shows the budget for each District compared to the low bid amount. Please see attached bid minutes for the complete bid results.

PKID	NAME	CONTRACT #	BUDGET	BID
07-03	Park Village	2015-8003-0673	\$207,000	\$202,127.82
07-04	Spring Meadows	2015-8003-0674	\$61,500	\$42,023.80
07-09	Morning Ridge	2015-8003-0675	\$52,600	\$31,281.32
07-11	Cassia Place	2015-8003-0676	\$38,600	\$15,435.60

Project Accounting Codes:	PKID 07-03	Project Acct Code: pk703-0054-0227
	PKID 07-04	Project Acct Code: pk704-0054-0227
	PKID 07-09	Project Acct Code: pk709-0054-0227

The budget amount of \$207,000 for the Park Village PKID reflects an increase over the preliminary “Grounds Improvements” budget amount of \$180,200 shown on the preliminary Park Village budget adopted at the 4/30/2015 Council meeting. This increase will be reflected in the final PKID budget adoption scheduled to be on the 6/4/2015 Council agenda. The increased project cost was the result of many Park Village residents asking for the removal of an unused sand volleyball pit to be converted to turf grass as part of this project as well as the addition of a light for the existing playground.

In addition, based on the bids received, the improvement budgets for Spring Meadows, Morning Ridge, and Cassia Place will be reduced for the final PKID budget adoption on 6/4/2015.

All PKID residents will be notified of the new assessments via mailed letter to each property owner. Council will receive a report on any objections to proposed PKID improvements and contracts before final contract award which is currently scheduled for the 6/25/2015 Council meeting.

The financial impact was reviewed by Laura Lorenzen, Management and Budget Analyst.

**STAFF RECOMMENDATION**

Staff recommends that the Council publicly declare all the bids for the PKID FY 2016 improvements complete, and award contracts to the lowest responsible and responsive bidders.

Respectfully submitted,

Brian Border, P.E.  
Project Coordinator

Attachments and Enclosures: Bid Minutes



## Council Communication

**TO:** Honorable Mayor and Councilmembers

**FROM:** Brian Border, P.E., Project Coordinator, 480-503-6937

**MEETING DATE:** May 14, 2015

**SUBJECT:** Declare bids for FY2016 improvements in Parkway Improvement Districts Nos. 07-03, 07-04, 07-09 & 07-11, and award contract Nos. 2015-8003-0673, 2015-8003-0674, 2015-8003-0675 and 2015-8003-0676.

**STRATEGIC INITIATIVE:** Community Livability

These projects support Gilbert's Community Livability as they provide aesthetic amenities to the PKID neighborhoods and surrounding areas.

### **RECOMMENDED MOTION**

A motion to reject all bids but the bid of the lowest and best responsible bidder, waive clerical errors, and award contracts for the work as follows:

1. Contract No. 2015-8003-0673 with Somerset Contracting in the amount of \$189,938.10 for work in PK No. 07-03, rejecting the bid alternate in the amount of \$12,189.72, and,
2. Contract No. 2015-8003-0674 with Somerset Contracting in the amount of \$42,023.80 for work in PK No. 07-04 and,
3. Contract No. 2015-8003-0675 with Somerset Contracting in the amount of \$31,281.32 for work in PK No. 07-09 and,
4. Contract No. 2015-8003-0676 with Somerset Contracting in the amount of \$15,435.60 for work in PK No. 07-11 and authorize the Mayor to execute the required documents.

### **BACKGROUND/DISCUSSION**

Gilbert formed nine (9) new Parkway Improvement Districts (PKIDs) in 2007 for purposes of installing new irrigation systems, landscaping, and making other improvements to the retention basin/park areas in residential neighborhoods. Gilbert Town Council has previously approved plans for improvements. The Improvements are intended to be made in phases over the next few years. The Landscape Architect retained by Gilbert, DM Designs, LLC prepared new plans and specifications for the FY2016 work which divides the work into four (4) separate bid packages to provide maximum flexibility to award the scope of work.

In April 2014, a total of four (4) bids were publicly opened for these projects. The lowest responsive and responsible bid results are as follows:

PK NO. 07-03 Somerset Contracting, LLC \$ 189,938.10 (Base Bid)  
 Somerset Contracting, LLC \$ 12,189.72 (Bid Alternate)\*  
 \* (Bid Alternate was rejected as Base Bid plus Bid Alternate was over budget)  
 The project includes complete irrigation system replacement as well as complete replacement of shrub plantings as well as minor sidewalk and concrete work.

PK NO. 07-04 Somerset Contracting, LLC \$ 42,023.80  
 The project includes complete replacement of the irrigation system as well as new shrub plantings.

PK NO. 07-09 Somerset Contracting, LLC \$ 31,281.32  
 The project includes replacement of the turf irrigation system as well as a new concrete header separating turf and decomposed granite.

PK NO. 07-11 Somerset Contracting, LLC \$ 15,435.60  
 The project includes replacement of the existing turf irrigation system.

The following is the remaining schedule for award of contracts:

- May 26<sup>th</sup> & June 2<sup>nd</sup> Notice of Award for FY2016 Improvements published in the Arizona Republic
- May 26<sup>th</sup> – June 10<sup>th</sup> Protest Period for FY2016 Improvements
- June 25<sup>th</sup> Council to report on Protest Period
  - If no written notices of objections are found, contracts are awarded
  - If written notices of objections are found, Council may move to award or reject the contract

The Contracts were reviewed for form by Special Counsel Susan Goodwin.

## **FINANCIAL IMPACT**

Each neighborhood determined the amount they wanted to allocate towards FY2016 improvements during the budget process in the winter of 2014-2015. The cost of these improvements is assessed in the home owner's property tax bill.

The following table shows the budget for each District compared to the low bid amount. Please see attached bid minutes for the complete bid results.

<b>PKID</b>	<b>NAME</b>	<b>CONTRACT #</b>	<b>BUDGET</b>	<b>BID</b>
07-03	Park Village	2015-8003-0673	\$200,500	\$189,938.10
07-04	Spring Meadows	2015-8003-0674	\$61,500	\$42,023.80
07-09	Morning Ridge	2015-8003-0675	\$52,600	\$31,281.32
07-11	Cassia Place	2015-8003-0676	\$38,600	\$15,435.60

Project Accounting Codes: PKID 07-03 Project Acct Code: pk703-0054-0227

PKID 07-04 Project Acct Code: pk704-0054-0227  
PKID 07-09 Project Acct Code: pk709-0054-0227  
PKID 07-11 Project Acct Code: pk711-0054-0227

The budget amount of \$200,500 for the Park Village PKID reflects an increase over the preliminary “Grounds Improvements” budget amount of \$180,200 shown on the preliminary Park Village budget adopted at the 4/30/2015 Council meeting. This increase will be reflected in the final PKID budget adoption scheduled to be on the 6/4/2015 Council agenda. The increased project cost was the result of many Park Village residents asking for the removal of an unused sand volleyball pit to be converted to turf grass as part of this project.

In addition, based on the bids received, the improvement budgets for Spring Meadows, Morning Ridge, and Cassia Place will be reduced for the final PKID budget adoption on 6/4/2015.

All PKID residents will be notified of the new assessments via mailed letter to each property owner. Council will receive a report on any objections to proposed PKID improvements and contracts before final contract award which is currently scheduled for the 6/25/2015 Council meeting.

The financial impact was reviewed by Laura Lorenzen, Management and Budget Analyst.

#### **STAFF RECOMMENDATION**

Staff recommends that the Council publicly declare all the bids for the PKID FY2016 improvements complete, and award contracts to the lowest responsible and responsive bidders.

Respectfully submitted,

Brian Border, P.E.  
Project Coordinator

Attachments and Enclosures: Bid Minutes



**Approved By**

Eliana Hayes  
Kenneth Morgan  
Laura Lorenzen

**Approval Date**

4/28/2015 8:30 AM  
5/5/2015 9:34 AM  
5/5/2015 5:00 PM



## Town of Gilbert Request for Bids

<b>Project Name:</b>	Park Village FY16 Landscape Improvements
<b>Date/Time:</b>	4/21/2015 3:00 pm
<b>Contract No.</b>	2015-8003-0673
<b>Project No.</b>	PKID

No.	Name of Company	Base Bid	Alternate Bid
1.	Somerset Contracting LLC	\$189,938.10	\$12,189.72
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			

  
Diane Shannon - Purchasing Department

 4/22/15  
Brian Border – Engineering Department

These are preliminary results only; these are subject to review for compliance to specifications and mathematical errors which may change the apparent lowest responsible bidder.



## Town of Gilbert Request for Bids

<b>Project Name:</b>	Spring Meadows FY16 Landscape Improvements
<b>Date/Time:</b>	4/21/2015 3:00 pm
<b>Contract No.</b>	2015-8003-0674
<b>Project No.</b>	PKID

No.	Name of Company	Base Bid
1.	Somerset Contracting LLC	\$42,023.80
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		

  
Diane Shannon - Purchasing Department

 4/22/15  
Brian Border – Engineering Department

These are preliminary results only; these are subject to review for compliance to specifications and mathematical errors which may change the apparent lowest responsible bidder.




## Town of Gilbert Request for Bids

<b>Project Name:</b>	Morning Ridge FY16 Landscape Improvements
<b>Date/Time:</b>	4/21/2015 3:00 pm
<b>Contract No.</b>	2015-8003-0675
<b>Project No.</b>	PKID

No.	Name of Company	Base Bid
1.	Somerset Contracting LLC	\$31,281.32
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		

  
Diane Shannon - Purchasing Department

 4/22/15  
Brian Border – Engineering Department

These are preliminary results only; these are subject to review for compliance to specifications and mathematical errors which may change the apparent lowest responsible bidder.



## Town of Gilbert Request for Bids

<b>Project Name:</b>	Cassia Place FY16 Landscape Improvements
<b>Date/Time:</b>	4/21/2015 3:00 pm
<b>Contract No.</b>	2015-8003-0676
<b>Project No.</b>	PKID

No.	Name of Company	Base Bid
1.	Somerset Contracting LLC	\$15,435.60
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		

  
Diane Shannon - Purchasing Department

 4/22/15  
Brian Border – Engineering Department

These are preliminary results only; these are subject to review for compliance to specifications and mathematical errors which may change the apparent lowest responsible bidder.



## Council Communication

**TO:** Honorable Mayor and Councilmembers

**FROM:** L. Michael Hamblin, Town Attorney, 503-6027

**MEETING DATE:** May 14, 2015

**SUBJECT:** Amendments to the Gilbert Town Code, Chapter 18 Cable Communications regarding Payment of Cable License Fees and Construction Permit fees

**STRATEGIC INITIATIVE:** Community Livability

Allows for flexibility in billing practices by cable service providers.

### **RECOMMENDED MOTION**

A motion to approve an ordinance amending Chapter 18 of the Town Code relating to payment of cable license fees and construction permit fees.

### **BACKGROUND/DISCUSSION**

As part of the negotiations with Cox Communications, it was determined that the Code should be clarified regarding license fees owed by cable service providers when those providers bundle services and provide a bundled service discount to subscribers who purchase non-cable services along with cable services. Municipalities are not permitted by federal law to regulate the rates charged by cable service providers and bundled service discounts have become common place in the industry.

The amendments to Chapter 18 in the attached ordinance clarifies how a bundled discount is allocated when a subscriber purchases bundled services (cable, internet and/or telephone). The ordinance requires that the discount be allocated proportionately over the categories of services in the bundle.

The amendment also provides that a permit fee will not be charged to cable licensees for work in streets, whether the work is for cable-related services or other work by the licensee.

The Settlement Agreement and License Agreement were reviewed for form by Special Counsel, Kelly Y. Schwab and Susan D. Goodwin.

**FINANCIAL IMPACT**

There is no anticipated financial impact.

The financial impact was reviewed by Laura Lorenzen, Management and Budget Analyst.

**STAFF RECOMMENDATION**

Staff recommends approval an ordinance amending Chapter 18 of the Town Code relating to payment of cable license fees and construction permit fees.

Respectfully submitted,

L. Michael Hamblin  
Town Attorney

**Approved By****Approval Date**

Michael Hamblin

5/11/2015 12:28 PM

Michael Hamblin

5/11/2015 12:28 PM

Laura Lorenzen

5/11/2015 5:53 PM

Douglas Boyer

5/11/2015 3:44 PM



**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, AMENDING THE CODE OF GILBERT, ARIZONA, CHAPTER 18 CABLE COMMUNICATIONS, SECTION 18-26 PAYMENT OF LICENSE FEE, RELATED TO CABLE LICENSE FEES FOR USE OF PUBLIC RIGHT-OF-WAY BY CABLE TELEVISION PROVIDERS; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING FOR SEVERABILITY; AND PROVIDING PENALTIES.

BE IT ORDAINED by the Common Council of the Town of Gilbert, Arizona, as follows:

**Section I.     In General.**

The Code of Gilbert, Arizona, Chapter 18 Cable Communications, Section 18-26 Payment of License Fees, Subsections (b) and (f) are hereby amended to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

**Sec. 18-26. - Payment of license fee.**

\* \* \* \*

- (b)     ~~If licensee provides its subscriber a price discount if the subscriber purchases a bundle of cable service and noncable services, then the price of cable service included in the bundle shall be allocated based on the licensee's standard, nondiscounted rate. For example: If a subscriber's charges for a given month for cable service alone would be \$40.00, for local telephone service alone \$30.00, and for internet services alone \$30.00, for a total of \$100.00. If the three services are offered at a combined price of \$80.00 (overall 20 percent discount), then the gross revenue from the cable service will be deemed to be \$32.00 (\$40.00 less 20 percent of \$40.00). Licensee shall not use bundled package offerings as a means of evading the payment of financial obligations that are based on cable service revenue.~~

IF LICENSEE PROVIDES ITS SUBSCRIBER AN ITEMIZED ALLOCATION OF THE DISCOUNTS PROVIDED WHEN THE SUBSCRIBER PURCHASES CABLE SERVICE TOGETHER WITH ONE OR MORE NON-CABLE SERVICES, THEN IN DETERMINING CABLE SERVICE GROSS REVENUES LICENSEE SHALL ALLOCATE THE DISCOUNT AMONG THE CABLE AND NON-CABLE SERVICES IN ACCORDANCE WITH THE DISCOUNTS ITEMIZED IN THE MONTHLY INVOICE TO THE SUBSCRIBER. IN DETERMINING THE DISCOUNTS ITEMIZED IN ITS MONTHLY

INVOICE TO THE SUBSCRIBER, LICENSEE SHALL NOT DISCOUNT CABLE SERVICE MORE THAN PROPORTIONALLY BASED ON THE RATIO OF THE STANDARD NON-DISCOUNTED CHARGES TO THE SUBSCRIBER FOR EACH SERVICE TO THE TOTAL STANDARD NON-DISCOUNTED CHARGES FOR ALL SERVICES. USING THE STANDARD NON-DISCOUNTED CHARGES IN THE EXAMPLE OF PROPORTIONAL ALLOCATION OF THE DISCOUNT AS DEFINED IN THE FOLLOWING PARAGRAPH, ON ITS MONTHLY SUBSCRIBER INVOICES LICENSEE MAY ALLOCATE FROM \$0.00 TO NO MORE THAN \$15.00 OF THE TOTAL \$30.00 DISCOUNT TO CABLE SERVICES.

IF LICENSEE DOES NOT ITEMIZE ALLOCATION OF THE DISCOUNTS PROVIDED ON MONTHLY SUBSCRIBER INVOICES WHEN THE SUBSCRIBER PURCHASES CABLE SERVICE TOGETHER WITH ONE OR MORE NON-CABLE SERVICES, THEN IN DETERMINING CABLE SERVICE GROSS REVENUES LICENSEE SHALL ALLOCATE THE DISCOUNT PROPORTIONALLY BASED ON THE RATIO OF THE STANDARD NON-DISCOUNTED CHARGES TO THE SUBSCRIBER FOR EACH SERVICE TO THE TOTAL STANDARD NON-DISCOUNTED CHARGES FOR ALL SERVICES. FOR EXAMPLE: IF (1) THE DISCOUNT IS \$30.00, (2) THE CHARGE FOR CABLE SERVICE IS \$50.00, (3) THE CHARGE FOR INTERNET SERVICE IS \$30.00, (4) THE CHARGE FOR TELEPHONE SERVICE IS \$20.00, AND (5) THEREFORE THE TOTAL CHARGE IS \$100.00, THEN THE DISCOUNT ALLOCATED TO CABLE SERVICE SHALL BE \$15.00.

LICENSEE MAY ALLOCATE THE DISCOUNT DIFFERENTLY OVER THE SERVICES, SO LONG AS SUCH ALLOCATION DOES NOT REDUCE THE GROSS REVENUES FROM CABLE SERVICES BELOW WHAT IT WOULD BE FROM THE ABOVE CALCULATION.

\* \* \* \*

- (f) In compliance with applicable law, licensee shall not be required to pay any ~~town right-of-way~~ RENTAL, APPLICATION, construction permit, INSPECTION, and ~~development review~~ INCONVENIENCE OR OTHER fees OR CHARGES which town imposes under town code requirements RELATED TO ~~on~~ licensee's USE OF ~~construction permit~~ activities in or on the town STREETS. ~~for cable services. If facilities constructed by licensee serve not only cable services but also internet service or telecommunications services, then licensee shall pay a proportionate cost of the permit fees attributable to those services for which an annual license fee is not being paid.~~

Section II. Providing for Repeal of Conflicting Ordinances.

All ordinances and parts of ordinances in conflict with the provisions of this Ordinance or any part of the Code adopted herein by reference, are hereby repealed.

Section III. Providing for Severability.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of the Code adopted herein by reference, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

Section IV. Providing for Civil Sanctions.

Any person found responsible for violating this section shall be subject to the civil sanctions and habitual offender provisions set forth in Section 1-5 of the Gilbert Municipal Code.

PASSED AND ADOPTED by the Common Council of the Town of Gilbert, Arizona, this \_\_\_\_ day of \_\_\_\_\_, 2015, by the following vote:

AYES: \_\_\_\_\_

NAYES: \_\_\_\_\_ ABSENT: \_\_\_\_\_

EXCUSED: \_\_\_\_\_ ABSTAINED: \_\_\_\_\_

APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
John W. Lewis, Mayor

ATTEST:

\_\_\_\_\_  
Catherine A. Templeton, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
L. Michael Hamblin, Town Attorney

I, CATHERINE A. TEMPLETON, TOWN CLERK, DO HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE ORDINANCE NO. \_\_\_\_\_ ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF GILBERT ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 2015, WAS POSTED IN THREE PLACES ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 2015.

\_\_\_\_\_  
Catherine A. Templeton, Town Clerk